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SUPREME COURT OF THE UNITED STATES.

No. 139.

RUSSELL STURGIS, CLAIMANT OF THE STEAM-TUG HECTOR, HER TACKLE, &c., IMPLEADED WITH THE SHIP WISCONSIN, HER TACKLE, &c., APPELLANT,

vs.

HERMAN BOYER, ALBERT WOODRUFF, AND JEREMIAH R. ROBINSON, OWNERS OF THE LIGHTER REPUBLIC, LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this [SEAL.] twelfth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the said United States the eighty-third.

KENNETH G. WHITE, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 28th day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the said United States the eighty-first.

GEO. F. BETTS, *Clerk.*

U. S. District Court, southern district of New York—In Admiralty.

HERMAN BOYER, ALBERT WOODRUFF and JEREMIAH R. BOBINSON, owners of the lighter "Republic," Libellants,
vs.
THE SHIP WISCONSIN, her tackle, &c., (Benjamin A. Mumford et als., claimants) and the steam-tug Hector, her tackle, &c., and Russell Sturgis, Claimant.

1855, Oct. 26. The libellants file their libel in the words and figures following to, wit:

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

The libel and complaint of Herman Boyer, Albert Woodruff and

Jeremiah R. Robinson, owners of the lighter Republic, against the ship Wisconsin, her tackle, &c., and the steam-tug Hector, her tackle, &c., in a cause of collision, civil and maritime, alleges as follows:

First. That at the times hereinafter mentioned, the libellants were the owners of the lighter Republic, which vessel at the time had on board a cargo of flour, which was in the possession of the libellants as a common carrier.

Second. That on or about the 15th day of October, the said lighter, having on board a competent crew, and rather more than half a load of flour in barrels, started from Pier 6, in the East river, in the port of New York, to proceed with said flour to the foot of Dover street in the same port.

That the wind was very light indeed, so that the said lighter proceeded up to the East river, propelled by oars at the rate of about one mile an hour, or less.

That at about 12 o'clock at noon of the same day, the lighter had arrived at a point nearly opposite the foot of Dover street, and had got headed toward the Dover st. pier, still moved at a very slow rate by her oars alone.

That while in such position the ship Wisconsin, in tow of the steamboat Hector and lashed to the larboard side of said tug, and between the tug and the New York shore, came down the said river, and was so negligently managed that the jib or flying jib-boom of the ship struck the said lighter, thereby capsizing her, and rolled her cargo into the water, and the same as well as the lighter was greatly damaged.

Third. That at the time of said collision there was no wind of any consequence; the tide was then about slack-water and the day was clear.

Fourth. That at the time of said collision, as the libellants are informed and believe, the said ship was in charge of stevedores and not mariners, and was propelled by the said steam-tug, being lashed alongside the same. That the lighter was in plain sight of the said ship and the said steam-tug, and might and ought to have been avoided by them.

Fifth. That every exertion possible was made by those on board of the lighter to avoid said collision, and while beyond hailing distance, those on board the lighter, by waving hats and otherwise, endeavored to call the attention of those in charge of the ship and tug, and as soon as within hailing *hailing* distance, by loud hails warned them to avoid said lighter, which they might have done by sheering or stopping.

Sixth. That said collision was not caused by any fault, neglect, or want of care of those on board the lighter, but was caused by negligence, want of care and skill on the part of those in charge of the said tow, in that, among other things, they were out of the

proper place, were incompetently manned, had no proper look-out, and disregarded the warnings on the part of the lighter, and did not in due time stop and back the steamboat's engines, or sheer the said tow so as to avoid the lighter, as they were bound to have done.

Seventh. That by reason of the premises the libellants are entitled to recover herein the damages by them sustained, which amount to the sum of $2,100 and upwards.

That all and singular the premises are true, and within the jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form of law may issue against the said ship Wisconsin and the steamboat Hector, and that all persons having or pretending to have any interest in the same may be cited to appear and answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to pronounce for the damages aforesaid, with interest and costs.

H. BOYER.

Sworn to before me this 26th day of October, 1855.

GEO. W. MORTON,
U. S. Com'r.

BENEDICT, SCOVILLE, & BENEDICT, *Proctors.*
E. C. BENEDICT, *Advocate.*

(*Endorsed:*)

13. 98. U. S. District Court. Herman Boyer et al. vs. The Ship Wisconsin and the S. B. Hector. Libel.
Benedict, Scoville & Benedict, Proctors.
E. C. Benedict, Advocate.
Filed October 26th, 1855.

Respondent's Costs.

District Court of the United States for the southern district of New York.

Filed the 26th day of October, 1855.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and fifty-five, by Herman Boyer et al. against the ship Wisconsin and the steamboat Hector, for the reasons and causes in the said libel mentioned, and praying that the said vessel may be condemned and sold to pay the demands of the libellants; and the said libellants and John Parrott, surety, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against

Jeremiah R. Robinson, owners of the lighter Republic, against the ship Wisconsin, her tackle, &c., and the steam-tug Hector, her tackle, &c., in a cause of collision, civil and maritime, alleges as follows:

First. That at the times hereinafter mentioned, the libellants were the owners of the lighter Republic, which vessel at the time had on board a cargo of flour, which was in the possession of the libellants as a common carrier.

Second. That on or about the 15th day of October, the said lighter, having on board a competent crew, and rather more than half a load of flour in barrels, started from Pier 6, in the East river, in the port of New York, to proceed with said flour to the foot of Dover street in the same port.

That the wind was very light indeed, so that the said lighter proceeded up to the East river, propelled by oars at the rate of about one mile an hour, or less.

That at about 12 o'clock at noon of the same day, the lighter had arrived at a point nearly opposite the foot of Dover street, and had got headed toward the Dover st. pier, still moved at a very slow rate by her oars alone.

That while in such position the ship Wisconsin, in tow of the steamboat Hector and lashed to the larboard side of said tug, and between the tug and the New York shore, came down the said river, and was so negligently managed that the jib or flying jib-boom of the ship struck the said lighter, thereby capsizing her, and rolled her cargo into the water, and the same as well as the lighter was greatly damaged.

Third. That at the time of said collision there was no wind of any consequence; the tide was then about slack-water and the day was clear.

Fourth. That at the time of said collision, as the libellants are informed and believe, the said ship was in charge of stevedores and not mariners, and was propelled by the said steam-tug, being lashed alongside the same. That the lighter was in plain sight of the said ship and the said steam-tug, and might and ought to have been avoided by them.

Fifth. That every exertion possible was made by those on board of the lighter to avoid said collision, and while beyond hailing distance, those on board the lighter, by waving hats and otherwise, endeavored to call the attention of those in charge of the ship and tug, and as soon as within hailing *hailing* distance, by loud hails warned them to avoid said lighter, which they might have done by sheering or stopping.

Sixth. That said collision was not caused by any fault, neglect, or want of care of those on board the lighter, but was caused by negligence, want of care and skill on the part of those in charge of the said tow, in that, among other things, they were out of the

proper place, were incompetently manned, had no proper look-out, and disregarded the warnings on the part of the lighter, and did not in due time stop and back the steamboat's engines, or sheer the said tow so as to avoid the lighter, as they were bound to have done.

Seventh. That by reason of the premises the libellants are entitled to recover herein the damages by them sustained, which amount to the sum of $2,100 and upwards.

That all and singular the premises are true, and within the jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form of law may issue against the said ship Wisconsin and the steamboat Hector, and that all persons having or pretending to have any interest in the same may be cited to appear and answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to pronounce for the damages aforesaid, with interest and costs.

H. BOYER.

Sworn to before me this 26th day of October, 1855.

GEO. W. MORTON,
U. S. Com'r.

BENEDICT, SCOVILLE, & BENEDICT, *Proctors.*
E. C. BENEDICT, *Advocate.*

(*Endorsed:*)

13. 98. U. S. District Court. Herman Boyer et al. vs. The Ship Wisconsin and the S. B. Hector. Libel.
Benedict, Scoville & Benedict, Proctors.
E. C. Benedict, Advocate.
Filed October 26th, 1855.

Respondent's Costs.

District Court of the United States for the southern district of New York.

Filed the 26th day of October, 1855.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and fifty-five, by Herman Boyer et al. against the ship Wisconsin and the steamboat Hector, for the reasons and causes in the said libel mentioned, and praying that the said vessel may be condemned and sold to pay the demands of the libellants; and the said libellants and John Parrott, surety, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against

their goods, chattels, and lands for the sum of two hundred and fifty dollars: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by court, or in case of appeal, by the appellate court.

H. BOYER.
JOHN PARROTT.

Taken and acknowledged this 26th day of October, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

John Parrott, party to the above stipulation, being duly sworn, doth depose and say: That he resides in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

Sworn to this 26th day of October, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded 26th day of October, 1855.

G. Z. B., *Clerk.*

U. S. District Court.

HERMAN BOYER et al.
vs.
THE SHIP WISCONSIN and THE S. BT. HECTOR, &c.

Process and publication in this cause is hereby waived, upon the claimants of the S. B. Hector duly appearing and filing their claim herein, and executing stipulations for costs and value, the latter to be in the sum of $3,000. The stipulations to be executed by Russell Sturgis and William Sturgis, jr., and the stipulations to justify before a commissioner, and the claimants to pay the fees of the officers and court into court, and hereby stipulate to file their answer on or before the 29th day of November inst., otherwise their default to be entered; the stipulations to stand in place of the vessel.

Dated New York, November 5th, 1855.

BENEDICT, SCOVILLE & BENEDICT,
Proct. for Libt.

(*Endorsed:*)

U. S. district court. 13. 98. Herman Boyer et al. vs. The

Ship Wisconsin and the S. B. Hector. Consent to bond. Filed Nov. 7, 1855.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the fifth day of November, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable Samuel R. Betts, district judge.

THE STEAM-TUG HECTOR and SHIP WISCONSIN asm.
HERMAN BOYER and al.

And now, Russel Sturgis, intervening for the interest of himself, appears before the honorable court, and makes claim to the said steam-tug Hector, her tackle, &c., as the same are about to be attached by the marshal, under process of this court, at the instance of Herman Boyer et al.; and the said Russel Sturgis avers that he was in possession of the said steam-tug Hector at the time of the attachment thereof, and that the person above named is the true and bona fide owner of the said steam-tug Hector, and that no other person is the owner thereof; and the said Russel Sturgis is the true and lawful bailee thereof, as owner; wherefore he prays to defend accordingly.

Sworn to and subscribed this fifth day of November, A. D. 1855, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

MARTIN & SMITH,
Proctors for Claimant of St. Tug Hector, &c.

Respondent's Costs.

District Court of United States for the southern district of New York.

Filed the 5th day of November, 1855.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the 26th day of October, in the year of our Lord one thousand eight hundred and fifty-five, by Herman Boyer et al. against the ship Wisconsin and the steam-tug Hector, their tackle, &c., for the reasons and causes in the said mentioned, and praying that the said steam-tug, her tackle, &c., might be condemned and sold to pay the demands of the libellants; and the parties hereto hereby consenting that, in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

And whereas also a claim has been filed in said cause by Russell Sturgis: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court; or, upon an appeal, by the appellate court.

R. STURGIS,
WM. STURGIS, JR.

Taken and acknowledged this 5th day of November, 1855, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

William Sturgis, jr., party to the above stipulation, being duly sworn, doth depose and say, that he resides in the district of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

WM. STURGIS, JR.

Sworn to this 5th day of November, 1855, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

Recorded the 5th day of November, 1855.

G. F. B., *Clerk.*

District Court of the United States for the southern district of New York—In Admiralty.

Filed the fifth day of November, 1855.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and fifty-five, by Herman Boyer et als. against the steam-tug Hector, for the reasons and causes in the said libel mentioned; and whereas the parties in interest have consented to waive the service of process of attachment against the said steam-tug on the claimants executing stipulations for costs and value, the latter in the sum of three thousand dollars, in lieu of the said steam-tug, being in the custody of the marshal, under the process to be issued in pursuance of the prayer of said libel, and by a consent signed by the proctors for the claimants, it has been agreed that the claimant of said steam-tug shall appear and answer said libel on file, as appears from said consent now on file in said court; and the parties hereto hereby

consenting and agreeing, that in case of default or contumacy on the part of the claimant or his surety, execution for the above amount may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall, at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree to Martin & Smiths, esquires, proctors for the claimant of said steam-tug Hector, abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

R. STURGIS,
WM. STURGIS, JR.

Taken and acknowledged this fifth day of November, 1855, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

William Sturgis, jr., party to the above stipulation, being duly , deposes and says, that he resides in the city of New York, and that he is worth the sum of six thousand dollars, over and above all his just debts and liabilities.

WM. STURGIS, JR.

Sworn to this 5th day of November, 1855, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

Recorded the fifth day of November, 1855.

G. F. B., *Clerk.*

Respondent's Costs.

District Court of the United States for the southern district of New York.

Filed the 26th day of October, 1855.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and fifty-five, by Herman Boyer and al. against the ship Wisconsin, &c., for the reasons and causes in the said libel mentioned, and praying that the said ship, her tackle, &c., might be condemned and sold to pay the demands of the libellants; and the parties hereto hereby consenting, that in case of default or contu-

macy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels and lands:

And whereas, also, a claim has been filed in said cause by Henry E. Scott and others:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

HENRY E. SCOTT AND OTHERS,
Claimants,
By J. J. WILLIAMS, their Attorney.
ELIAS B. BROWN,
SAM'L ROSE.

Taken and acknowledged this 26th day of October, 1855, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Elias B. Brown and Samuel Rose, parties to the above stipulation, being duly sworn, doth depose and say, and each for himself saith, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

ELIAS B. BROWN,
SAM'L ROSE.

Sworn to this 26th day of October, 1855, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded the 26th day of October, 1855.
GEO. F. BETTS,
Clerk.

District Court of the United States for the southern district of New York—In Admiralty.

Filed the 26th day of October, 1855.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and fifty-five, by Herman Boyer et al. against the ship Wisconsin, &c., for the reasons and causes in the said libel mentioned; and whereas the parties in interest have consented to waive the service of process of at-

tachment against the ship Wisconsin, on the claimants executing stipulations for costs and value, the latter in the sum of three thousand dollars, in lieu of the ship Wisconsin, being in the custody of the marshal, under the process to be issued in pursuance of the prayer of said libel; and the claimants further consenting to appear and answer the libel on file on or before the tenth day of November next, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants of the ship Wisconsin, or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall at any time upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree to Williams & Barnard, esquires, proctors for the claimants of said ship Wisconsin, abide by and pay the money awarded by the final decree rendered by the court, or the appellate court if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

HENRY E. SCOTT AND OTHERS, *Cl'mts*,
By J. WILLIAMS, their Attorney.
ELIAS B. BROWN,
SAM'L ROSE.

Taken and acknowledged this 26th day of October, 1855, before me.
GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Elias B. Brown and Samuel Rose, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of six thousand dollars, over and above all his just debts and liabilities.

ELIAS B. BROWN,
SAM'L ROSE.

Sworn to this 26th day of October, 1855, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded the 26th day of October, 1855.
GEO. F. BETTS, *Clerk.*

1855, Dec. 10. Russel Sturgis, claimant of the steamboat Hector, files his answer in the words and figures following, to wit:

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

The answer of Russell Sturgis, claimant of the steam-tug Hector

and respondent to the libel and complaint of Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson, libellants.

First. The said respondent denies each and every allegation contained in the second, third, fifth, sixth, and seventh articles of said libel, except so far as the same are hereinafter expressly admitted.

Second. That on the day in said libel mentioned the said steam-tug Hector was employed by the owners of the ship Wisconsin, mentioned in said libel, to tow said ship from foot of Water st., East river, to the pier or slip at the foot of Dover st., in the city of New York; that the said ship then was, and until towed and made fast to said pier, continued in charge of a skilful and competent captain and crew; that said steam-tug and her crew were merely the motive power to move said ship to said pier, and were subject to and obeyed the orders of the captain and officers in charge of said ship while attached to her, and were subject to and obeyed such orders before, at, and after the time of the accident or collision mentioned in said libel, and he prays that in case the libellants recover any sum against said ship and tug herein, he may have a decree against said ship and her owners for any portion of said sum which he may become or be liable to pay.

Third. That when steam-tug arrived with said ship at the foot of Dover st. the said tug was endeavoring to put said ship into her berth at said pier by letting her sag into the same; that the helm of said ship was then put a-port, and the engine of the tug was stopped. Some time after this, the said lighter was seen approaching said ship under full sail, the wind blowing a three-knot breeze. As soon as the lighter was seen approaching, the engine of the steam-tug was backed, and continued backing for more than 3 minutes after the lighter was seen, and before she touched the ship, so that before the lighter touched the ship the tug and the ship were perfectly stationary, if not moving backward from the lighter; that the lighter approached the ship with her jib and mainsail set, under full headway, and her peak halyards came in contact with the ship, and thereby caused her to upset. That no attempt was made by those on board the lighter to check her speed, to port her helm, or to lower her peak halyards, or in any way to avoid said accident, and every possible effort was made by those on board of the steam-tug and the ship to avoid and prevent the same, and the same occurred through the negligence, carelessness, and incompetency of the persons in charge of the lighter. That said persons might easily have avoided said accident by porting the lighter's helm, by lowering her peak halyards, or checking her speed, and neither said steam-tug, nor said ship, nor the persons on board of the same, are in the slightest degree in fault for the happening of said accident; wherefore the claimant prays that said libel may be dismissed with costs.

R. STURGIS.

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Sworn to before me this 8th Dec., 1855.
CHAS. L. BENEDICT,
Not. Pub.

MARTIN & SMITHS, *Proc's for Cl'mt.*
A. F. SMITH, *Advocate.*

(*Endorsed:*)

13. 98. U. S. District Court. Herman Boyer et al. ag'st The Steam-tug Hector, her tackle, &c.
Answer.
Martin & Smiths, Proctors.
Filed December 10th, 1855.

U. S. District Court.

HERMAN BOYER et al.
vs.
THE SHIP WISCONSIN and the S. B. HECTOR.

We hereby consent that the ship Wisconsin be bonded, upon the claimants thereof appearing and filing their claim and answer herein, and executing stipulations for costs and value, the latter to be in the sum of three thousand dollars. The stipulations to be executed by Elias B. Brown and Samuel Rose, and the stipulators to justify before a commissioner, and the claimants to pay the fees of officers of court into court.

BENEDICT, SCOVILLE & BENEDICT,
Lib'ts' Proctors.

We hereby consent to appear and answer the libel in this action on or before the 10th day of November, 1855, and that process of attachment be waived.

WILLIAMS & BARNARD.

(*Endorsed:*)

13. 98. U. S. District Court. Herman Boyer et al. vs. The Ship Wisconsin and the S. B. Hector.
Consent.
Benedict, Scoville & Benedict, proctors.
Filed Oct. 26, 1855.

At a special term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Friday, the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable Samuel R. Betts, district judge.

HERMAN BOYER, ALBERT WOODRUFF, and Jeremiah R. Robinson, Libellants, asm. THE SHIP WISCONSIN, her Tackle, Apparel, and Furniture.

And now, Benjamin A. Mumford, intervening for the interest of himself and Henry E. Scott, Edward Elsworth, John Elsworth, and Sylvanus F. Jenkins, and Oliver R. Mumford, appears before this honorable court, and makes claim to the said ship Wisconsin, her tackle, &c., as the same are attached by the marshal, under process of this court, at the instance of Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson; and the said Benjamin A. Mumford avers that he was in possession of the said ship Wisconsin at the time of the attachment thereof; and that the persons above named are the true and bona fide owners of the said ship, and that no other person is the owner thereof, and the said the true and lawful bailee thereof, as ; wherefore he prays to defend accordingly.

B. A. MUMFORD.

Sworn to and subscribed this 26th day of October, A. D. 1855, before me.

W. O. MUMFORD, *Notary Public.*

WILLIAMS & BARNARD,
Proctors for Claimants, 11 *Wall st., N. Y.*

(*Endorsed:*)

13. No. 98. United States District Court for the southern district of New York. The Ship Wisconsin, her tackle, &c., asm. Herman Boyer et al. Williams & Barnard, proctors for claimants. Claim of Benjamin A. Mumford, Henry E. Scott, and others. Filed the 26th day of October, 1855.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Friday, the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable Charles A. Ingersoll, district judge.

THE SHIP WISCONSIN, her Tackle, &c., ads. HERMAN BOYER et al.

On filing a consent to stipulate and waive the service of process of attachment against the ship Wisconsin, and the terms being complied with, on motion of Messrs. Williams & Barnard, proctors for the claimants of the ship Wisconsin, it is ordered that the appearance of the claimants be entered, and that the stipulation for value represent the said ship.

(*Endorsed:*)

Vol. 13, No. 98.

United States District Court for the southern district of New York. The Ship Wisconsin, her tackle, &c., ads. Herman Boyer and al. Order to stipulate, &c.

Filed the 26th day of October, 1855.

UNITED STATES OF AMERICA,
Southern District of New York.

In Admiralty.

To the Honorable Samuel R. Betts, Judge of the District Court of said district:

And now, Benjamin A. Mumford, Henry E. Scott, Edward Elsworth, John Elsworth and Sylvanus F. Jenkins, intervening for their interest in the ship Wisconsin, appear before this honorable court, and for answer to the libel and complaint of Herman Boyer, Albert Woodruff and Jeremiah R. Robinson, against the said ship Wisconsin, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, allege and articulately propound as follows:

First. That the claimants are the true and lawful owners of the said ship Wisconsin, her tackle, apparel and furniture.

Second. That these claimants have no knowledge or information as to whether the said libellants are or were the owners of the said lighter Republic at the time in the said libel referred to, or as to whether the said lighter, at the time aforesaid, on board a cargo of flour, which was in the possession of the libellants as common carriers or otherwise, and therefore neither admit nor deny the same, but leave the said libellants to make such proof thereof as they may be able.

Third. That as to the matters in the second, third, fourth, fifth and sixth articles of the said libel set forth, these claimants say that they are in great part falsely alleged, and that the truth is as is hereinafter particularly set forth, and not otherwise, to wit: that on or about the said 15th day of October, the said ship Wisconsin left the pier at the head of Cherry street, in the East river, in the port of New York, in tow of and securely lashed to the starboard side of the said steam-tug Hector, and between the said tug and the New York shore, and proceeded down the said East river, so lashed to the said tug as aforesaid, for the purpose of mooring alongside the ship William Rathbone, then lying at the foot of Dover st., in said East river. That said ship was, during all the time herein referred to, in the charge and under the control and management of the captain and officers of the said steam-tug, but at the same time had on board of her the mate, helmsman, and a full complement of mariners, all under the direction and control of the captain and officers of the said steam-tug; that the said

steam-tug had also on board a good, sufficient and competent master, officers and crew; that, about 12 o'clock at noon on the day last aforesaid, the day being clear, the wind blowing a moderate breeze from the west, to wit, about a three-knot breeze, and the tide setting up said river at the rate of about one mile an hour, the said tug while proceeding down said river with the said ship in tow as aforesaid, and at a distance of about 100 y'ds above the foot of Dover st. and at about 150 y'ds from the New York shore, put her helm and the helm of said ship hard a-port and stopped her engine, for the purpose of coming in at the foot of Dover st., as aforesaid. That, very soon thereafter, the captain and crews of the steam-tug and the said ship saw the said lighter Republic quartering across the said East river with the current at an angle of about 45 degrees, and at a distance of about 300 y'ds from the New York shore, and at a distance of about 400 y'ds from the said ship and steam-tug, and about 200 y'ds outside of said ship and steam-tug, with all sheet off, under jib and mainsail, and moving at the rate of about 4 miles an hour. That thereupon, and instantly thereafter, the captain of the said steam-tug gave orders to back the said steam-tug hard, which order was instantly obeyed, and the helms of both the said steam-tug and the said ship put hard a-port, and that said helms were so kept hard a-port, and the said tug kept backing with all the power of her engine till the said tug and ship came to a dead stop, being then about 75 y'ds from the New York shore and about opposite the foot of Dover st. aforesaid, when the said lighter, pursuing her course aforesaid, without any change whatsoever, with all sheet off and carrying her jib and mainsail as aforesaid, and still persisting in her endeavors to cross the bows of the said steam-tug and ship, caught her peak halyards upon the end of the flying jib-boom of the said ship, within 3 feet of the end of her gaff, and by means of her said motion drew her down upon her side, which is the same identical injury and damage in the said libel complained of and therein wrongfully and falsely set forth.

Fourth. That the said lighter, from the time she came in sight of the said steam-tug and vessel to the time of the said collision, in no manner changed her course or slackened her speed, or did any act whatsoever tending to avoid or for the purpose of avoiding the said collision; that she had on board but two men, both of whom these claimants believe to be utterly incapable of managing such a vessel; that had said lighter changed her course, as she might have done, either to the right or left, said collision would have been avoided; that, had said lighter dropped or lowered her peak, or cast loose her peak halyard, which could have been done in a moment of time, and which it is the universal custom of such vessels to do in case of approaching a vessel where there is the slightest danger of a collision, said collision would have been

avoided; that everything was done on board of said steam-tug and vessel to avoid said collision that could have been done, and that the same occurred solely through the unskilfulness, negligence, fault and bad management of the persons on board of and in charge of said lighter, and that the owners of the said ship are not liable to pay to the said libellants the damage sustained by them by the collision aforesaid.

Fifth. That all and singular the premises are true; in verification whereof, if denied, the claimants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the claimants pray that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

BENJ. A. MUMFORD.

WILLIAMS & BARNARD, *Proctors for Claimants.*
J. J. WILLIAMS, *Advocate.*

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Sworn to by the said Benjamin A. Mumford, one of the claimants, before me, this 19th day of November, A. D. 1855.

Witness my hand and official seal.

JOHN BISSELL, [SEAL.]
Notary Public, 11 *Wall st.*

(*Endorsed:*)

13. 98. U. S. District Court, southern dist. of N. Y. In Admiralty. Herman Boyer and al., Libellants, vs. The Ship Wisconsin, her tackle, &c. Answer.

Williams & Barnard, proctors for claimants, 11 Wall st., N. Y

Filed Nov. 19, 1855.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

The replication of Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson to the answer of Benjamin A. Mumford, Henry E. Scott, Edward Elsworth, John Elsworth, and Sylvanus F. Jenkins, claimants of the ship Wisconsin, and to the answer of Russell Sturgis, claimant of the steam-tug Hector, alleges that they the said libellants will aver, maintain, and prove their said libel to be certain, true, and sufficient, and that the said answer of the said claimants is uncertain, untrue, and insufficient, and they humbly pray, as in and by their said libel they have already prayed.

BENEDICT, SCOVILLE & BENEDICT,
Libl'ts' Proctors.

(*Endorsed:*)

13. 98. U. S. District Court. Herman Boyer et al. vs. The Ship Wisconsin and the S. B. Hector. Replication.
Benedict, Scoville & Benedict, proctors.
Filed 15 Dec'r, 1855.

U. S. District Court.

HERMAN BOYER and others, owners of lighter Republic,
vs.
THE SHIP WISCONSIN, MUMFORD and o'rs, Clm'ts, and The Steam-tug Hector, Russel Sturgis, Clm't.

13. 98. Action for Collision in East river.

Benedict, Burr & Benedict for Lib'ts.
Williams & Barnard for Ship. Martin & Smiths for Tug; Mr. Donohue, of counsel for Tug.

Tuesday, 16th Dec'r, 1856.

Pleadings read.

Stephen D. Horton, (sworn.) Mariner 20 years. Saw collision; witness was on board ship Golden Risk, between Market and Catharine streets; looked down East river and saw the lighter and ship within a rod of each other; thought there would be a collision; thinks ship's jib-boom was rigged in, and end of it took lighter's peak halyards or some part of the purchase rigging aloft and capsized her; the ship was moving down the river slowly; there was a very light breeze off from Brooklyn—not wind enough to command a vessel; ship was moving 4 or 5 knots when she passed witness; she had stopped engine, but not deadened her way much when she hit the lighter; about ¼ knot flood-tide where ship was—nearly the last of flood. There was nothing in the way to prevent ship going out into the river. Ship was on the starboard side of tug, between it and piers; a man at ship's bow or at wheel of tug would have the lighter in fair view. The ship was just about heading towards the wharf.

Cross-examined for tug. Nothing called his attention particularly to ship and tug when he first saw them; could not determine which piers she was opposite to; did not notice her again until within one rod of lighter; could then see the whole of starboard side of ship and ½ of tug's stern; could see the engine, and when it stopped and worked back; saw it above the ship; could not tell which way it was looking; she might have been previously stopped; lighter was between dock and bow of ship, about one rod off; supposed it was part of lighter's rigging; was on jib-boom of ship; the hull of lighter must have been mostly under bowsprit of ship to enable ship's

jib-boom to take off rigging of lighter; thinks lighter capsized within ½ to ¾ of a minute after was struck; saw nothing done on the lighter; ship was ⅓ across river from N. Y.

Re-direct. There was room enough for the ship to have gone between the lighter and the piers.

John Conner, (sworn.) Lighterman. Was capt. of Republic; two men besides him and another man on board not belonging to her. She had a full crew. Started from pier 6, E. R.—380 bbls. flour; will carry 500 bbls. Wit. was at helm; the other men forward at their oars, there being no wind; they were behind the oars pushing forward; used them most all the way until got between Peck slip ferry and Dover street slip, when vessels struck; lighter was heading for N. Y. shore when she was struck; was still pulling at oars; no wind to help; could not pull her ahead any with the oars; could only keep her steady, and was carried by tide. First saw ship when wit. was between Beekman st. and Peck slip; then ship about 300 yds. off; thought she was coming in there and took his hat off and waved for her to keep outside of him; tug made no revolution back till within 3 rods of striking; some one came on ship and called wit. to keep back and get out of the way; her headway was not stopped untill after lighter sunk; a man went out on ship's jib-boom and cut the peak halyards of lighter—she was then sinking—to get them clear of his jib-boom, as wit. supposes; tug never backed or changed her course till she struck; came directly on him; wit. did not hail them; she was too near to do anything but for his men to make ready to get ashore. Witness let his peak halyards run, but had no time to brail them in; did not let them go before jib-boom was afoul; could not get out of the way of ship; had no wind; if not struck halyards ship would have struck lighter on starboard quarter, near midships; thinks tug was coming down about 3 knots. Flour was in tiers, and when struck all the flour rolled out and floated down the river.

Cross-examined. Had no wind coming up; depended on oars and tide; peak was on larboard side all the way; when he felt any wind it bore off that side; not more than sixty y'ds off end of longest pier; had started head of lighter in towards shore to upper side of Peck slip before he saw the ship; had no opinion of what pier ship was going to; could not see engine of tug; thought there would be a collision when he swung his hat; then she was 50 rods off; ship was heading straight down the river 300 y'ds off when he first saw her; could not tell whether she was inside or outside of his track; his peak halyards were cut before his men let them run; lighter was then filling.

John Wicks (sworn.) Is lighterman; saw the collision; was about 200 y'ds off, heading towards N. Y. shore.

(Adjourned to Friday, the 26th, peremptorily.)

Friday, Dec. 26th—Continued.

Laurence, seaman, (sworn.) In towing business; saw the collision off opposite Peck slip ferry; was then pilot on Fulton ferry; had been for six y'rs previous; it was past 12 m.; witness was on trip to Brooklyn; first he saw was Hector with ship on her starboard side, coming down the river; she was about opposite Rosevelt st., and wit. opposite Fulton ferry, not above it, and about ½ across river; cannot fix distance from his ferry to Rosevelt st.; shortly after he saw Hector, then saw lighter next look he made; saw Hector was rather heading in towards N. Y., and some two to four lengths of lighter from her; thought that there was danger of collision, because ship had headed in towards shore, and was moving ahead; think I rate of 2 or 3 knots; after that saw wheels of Hector stopped, but that did not stop ship going ahead, and she came up against the lighter; the tide would be ebb there, just beginning; the flour floated down as soon as it got into the water; did not think lighter had much of any headway on her when he first saw her; wind was light; she was then heading in towards pier 28 or 29, or towards Dover st.; witness in a position to see pretty well her direction; did notice she used sweeps; does not think there was enough wind to fill off the sails of lighter; saw effect of vessels coming together; if jib-boom of ship had cleared halyards, still he thinks ship would have struck the lighter; did not hear bells of Hector when he returned to N. Y. side; the flour from lighter was off his slip and in it; had to stop his ferry-boat to enable people to get flour out of his way.

Cross-examined. Thinks he saw lighter about off centre of Peck slip 3 or 400 y'ds off, and tide about slack—if anything, a trifling ebb; not wind enough to flow out her sails; can sometimes in such situation; lighter *was* be managed and helped by her sweeps, but could not be propelled bodily by her sweeps, when tide is a little ebb in river, and flood in by docks; when he took 2d look of ship she was nearly off Dover st., or Peck slip; thought, by her being slightly towards shore, she was intending to go in there; wit. then in middle of river; they were then clear of ferry-boat; thinks ship was outside of lighter when he first saw her; doubted, from his position, whether ship was not coming down so as come in his way; thinks there was another lighter a little further above; ship was high out of water; Hector on Brooklyn side of her; the usual and proper position of the two, if it was intended to land ship on N. Y. side; cross-piece of Hector's engine and head of engine was higher than bulwark of ship, and could be seen from another ves-

sel ½ mile off; is sure the engine was going forward when he looked at it 2d time.

Re-direct. Not aware of any vessel in the way of Hector keeping out in the river clear of the lighter.

William Riley (sworn.) Lighterman on Eliza, 200 y'ds from ship Nector; came from pier No. 19 E. river, 150 y'ds or so behind the lighter Republic; pulled up with sweeps; air very light; not wind enough to blow the sails clear of lighter's head; wit. was bound to Empire stores, Brooklyn; kept out about ⅓ of river to get first drain of flood; wit. was further out than Republic; at time of collision saw Hector coming down with ship, and wit. struck out as hard as he could towards Brooklyn, and out of flood tide, to get out of the way; she was coming straight down the river when he first saw her; had she come down on that course she would have passed between him and the Republic; Republic was then heading to N. Y. shore; Rep. was pulling up about 1 or 1½ knot; just before coming abreast of Dover st., Hector and ship sheered inshore, and in that sheer came foul of Republic; thinks Hector came 3 or 4 knots through the water; thinks Republic would have fetched into her pier, if ship had not struck her; her boom struck above gaff between mast and peak-halyards of Republic.

Cross-examined. Was not in right line with ship when he first saw her; was rather inshore of her, but struck out into river; kept his eye on tug from time he first saw , so as to observe her proceedings and keep clear of her and get to Brooklyn. Republic began heading in to N. Y. side about abreast of Black Ball pier.

Re-direct. It is usual for lighters to move about the river with sweeps in such state of wind; she had no means of getting out of the way of ships but with those sweeps.

John Taylor (sworn.) Was master of lighter China, passing from Catharine ferry on Brooklyn to pier 13, N. Y. side, past Wall st.; not loaded; saw the collision; witness went about on N. Y. side, ⅔ across of river, and then pulled off with sweeps; Hector was then about in line with his starboard bow; Republic was about 100 yds. from ship, and on her larboard bow, when he first saw her; when he first saw them Republic was furthest out in river, heading for N. Y. shore; ship and tug heading then straight down the river; if both had kept that course ship would have gone clear and on Brooklyn side; the lighter had no means to get out of way; ship changed her course towards N. Y. side; did not see act of collision; witness was right behind them, a little on starboard side of ship; that put ship and tug furthest out in river; ship was moving ahead, but could not see whether engine of tug was moving; could see larboard quarter of tug, but not her whole larboard side; if steamer had stopped and backed, that would have canted head of ship in towards Brooklyn; did not see jib-boom catch lighter's rigging; saw it engaged there

after it caught: then about slack water, and was using his sweeps; that is usual mode: Republic could not then have got out of way of ship; sweeps do little more in such state of tide than keep steering of lighter; there was plenty of room on each side of lighter for ship; not in her way; would have gone easiest on Brooklyn side; i. e., there was room enough between Republic and N. Y. side for ship and tug.

Cross-examined. Did not think ship and Republic would come together when he first saw them; supposed them about 100 yds. apart; when he was crossing to N. Y. side ship and tug had passed down by them; he was about middle of river when they passed.

Thomas Martin (sworn.) Lighterman 10 to 12 y'rs; was on Republic; pulling sweeps facing aft; another man was pushing forward; left pier 6 11½ a. m.; pulled into true tide; used sweeps all the way up; not wind enough to blow sails off mast; began to head in for dock at Peck slip ferry 200 *from* 300 y'ds from ends of piers; could see up river, and saw ship coming right down; witness and capt. and another man sang out to her to go under stern of Republic; supposes Rep. was moving one knot the hour; lighter not fully loaded; might carry 100 bbls. or more flour; jib-boom struck between peak-halyards and mast, and struck nearer mast-head, taking a small piece off; ship was canted inshore on N. Y. side; thinks ship was coming 4 or 5 knots and down the river when she struck; they sang out from ship for him and others to get out of lighter as quick as they could; did get out on ship's starboard anchor, which hung near the water; if ship had not struck rigging of lighter, would have hit her mid-ships and capsized her; the lighter canted towards the shore before the ship; expected to pull in and fetch the dock if had not been struck by ship; judge vessels would have cleared each other if had kept on when he first saw them; change of course of ship caused the collision.

Cross-examined. Thinks ship was 600 y'ds off when he first saw her and Republic; had got canted towards upper side of Peck slip when he saw her, and was heading for pier 27, foot of Dover st., one pier above Peck slip; had *saw* the larboard sides of ship and tug when Republic first canted in, and when the ship canted in was about 600 y'ds off; had only one sweep in use when he first saw ship and tug; only one sweep out to his knowledge; let sail run down himself before the vessels struck; peak-halyards had been let go before the collision; his attention was called to ship by hails of men from lighter to her, and swinging his hat to go under stern of lighter; kept to his oar till ship was near, when he received orders from Captain Thomas to let peak-halyards run; then dropped his oar, leaving his companion pulling at it; did nothing more on Republic to avoid collision; Republic about 35 feet long, perhaps more.

Michael Callahan (sworn.) Lighterman, 5 yrs.; was a hand on Republic; was forward pulling at sweep facing forward; left pier 6 at 11½, slack water.

When first saw tug she was heading down river, and Republic was heading inshore; on that course she would have got clear.

After ship changed her course, capt. of Republic swung his hat and hailed them to keep outside and go under his stern; did not do so, but came straight forward; witness and another hailed them also; saw ship when she canted in; Rep. canted first; she struck 10 or 11 feet from stern, on larboard side; flying jib-boom went between peak-halyards and mast; touched mast; he saw the mast afterwards; peak-halyards was let go before ship struck by his companion by capt.'s orders; the peak-brails had been hauled taut, and jib-boom held fast, and a man was sent from ship to cut peak-halyards; saw the wythe *aff* afterwards; saw the man cut halyards with sheath knife; could do nothing but pull ahead to keep out of way of ship; if tug had sheered to larboard she would have cleared the lighter.

When ship was 25 yds. off and before jib-boom touched lighter, they hailed from ship for people on lighter to stand by and get on the ship.

Cross-examined. Pulled on oars till our captain ordered to take in sail after peak-halyards dropped, then dropped his oar and started to take in sails; the sail had been very little use, but sometimes might be air enough to move her knot an hour; gaff was little on starboard side; saw both sides of ship, and also seen tug when capt. hailed; then about 300 yds. off; saw then whole length of ship's starboard side, but not of larboard side, but could see larboard and bow and part of starboard side of steamer; did not know where ship was going; if he had known she was going to Dover st. should not have crossed her bow; was hauling in brails when jib-boom struck mast; had only one sweep out when collision took place; does not know that another was used at all; sometimes capt. has one out *aff* using it; didn't know he had then; flour piled up between them kept him from seeing what capt. did.

Defence.

William Ostrom (sworn.) Stevedore, 8 yrs.; was 15 yrs. at sea; was 5 yrs. shipmaster; was on Wisconsin at time of collision as head stevedore of ship; were moving her from Hook, foot of Grand st., to Dover st. wharf; the men on ship were his hands; wit. was on board to unmoor ship and make fast to tug, and then to make her fast at Dover st.; had no other charge or service on board.

Capt. of tug was on board, and mate of ship on board ship; Capt. Phillips a passenger; ship was exclusively in charge of capt. of steam-tug, after wit. had cast her off.

Tide was strong flood when ship started at Grand st. at about half

or quarter past 10 a. m.: got to Dover st. in about an hour; tide then was just last of flood, then running up a knot an hour where ship was, a light air from westward; about 2-knot breeze; the ship was about off Rosevelt st., 200 yds. from end of pier, when he first saw Republic, then on ship's larboard bow, and 100 yards further off than ship; Republic then half way between Peck slip and Black Ball dock, standing across ship's bow, at an angle of about 45°, 100 yds. off, heading on shore about N. W., and ship was heading about S. W., and each heading at at an angle of about 45° to the shore.

When ship ported helm for N. Y. shore, was about 100 yds. above Dover st. pier, to lay alongside of ship Wm. Rathbone, which lay at end of that pier; is certain Republic had her mainsail up; did not notice about jib; did not see any sweeps out; was standing aft on ship's house, alongside of captain of tug; thinks Capt. Phillips was with them. The tug had stopped her engine before he saw lighter, and helm was hard a-port to sheer in alongside of Wm. Rathbone; thinks two minutes before, before he saw lighter; then saw her and her capt. waving his hat; capt. of tug then called out to back her hard, and thinks she backed for three or four minutes with all her force before the collision.

Witness thought collision was possible, and ordered his men and hallooed himself to lighter to drop his peak; several called same at same time; did not see it drop; jib-boom of ship went in between peak halyards and mast, and peak halyards hung over boom, and backing off tug pulled lighter over towards her as she backed towards Brooklyn. If peak halyards had been dropped, jib-boom could not have caught under halyards; had his eye most of time on Republic, and just before collision he ran forward before bows of vessel had touched, and lighter was then hanging by halyards; hung 3 or 4 minutes until wit. had halyards cut, which released that hold and nothing else; (describes how it took place;) thinks Republic filled before she touched bows of ship; thinks ship was about parallel with wharves up and down the river; when collision took place, the backing of tug had pulled her bows out after jib-boom got caught, and heeled round—lighter also; thinks ship was about stationary, otherwise backing of tug could have not hauled her head out, as her helm was hard a-port to his knowledge; and capt. of tug repeatedly ordered her helmsman to keep his helm hard a-port, and back his engine; when wit. first went forward of ship so as to see over the bows the larboard side was under water, and the flour was sliding overboard, and was about stationary, and shortly after began to float down the river.

Is positive that peak never dropped at all till cut, and can't tell how it was then; the starboard side of lighter was towards the ship when she floated past; does not think any collision would have taken place if peak halyards of Repub. had been dropped; thinks

if lighter had sweeps out, and had pulled back, she could have prevented the collision by turning her bow round inshore; if lighter had at same time ported her helm hard, she would by the sweep and degree of wind paved off her bow towards Brooklyn, enough to have avoided the collision; did not see a thing done on her to avoid it; she was heading about the same the last he saw her afloat, as when he first saw her; the working of engine back actually took ship so out into the river as to bring her round, and were compelled to back her stern up to place, and then swung about to get her proper position; was detained for above an hour; ship was light—just enough cargo in her to keep her up.

Cross-examined. The ship was 850 tons; no crew in her except the stevedores.

Saturday, December 27th—Continued.

Re-direct. Made a mistake yesterday as to points of compass; ship headed about N. W. and wind about W. or S. of W. before the collision, and in the act of collision ship headed about W.; river ranges E. and W. at that point. Thinks Republic was in motion at time of collision, about 2 knots the hour; rear end of gaff was one or 2 feet short of stern of lighter; helm of ship and tug were ported hard before he saw Repub. by order of master of tug; 5 minutes interval between time he first went forward and hailed Republic, and that of going forward and hailing; at that last time Republic was hanging 25 feet clear of body of ship; did not touch ship anywhere except end of jib-boom, and was in act of sinking.

Mr. Donohue, for tug. Mate of ship; was on board; witness had nothing to do with getting the tug; his orders were to get the ship to foot of Dover st.; does not know who hired the tug; she joined the vessel at about 10 a. m.; one of witness's men had wheel of ship, (Ellah Adams,) a good sailor; the tug was slowed a short distance above Rosevelt st.; that was a proper place to slow; engine was stopped abreast of Rosevelt st.; that was a proper place to do it; the wheel had been ported at the proper place to get ship in; had a small boat alongside of ship and lines; a man all ready to send boat and lines ashore, and vessel sagged in to aid in that movement.

Cross-examined. The owners furnished the tug and sent her to the ship; witness did not know what tug was to be sent to him; ship was off pier 29 when wit. first saw the Republic (Rosevelt pier.) Helm of ship was put hard a-port, and vessel began to sheer in 3 or 4 minutes before wit. saw the Republic; ship was then about 200 yds. off ends of piers, and thinks Repub. was about the same distance out at that time.

Pilot of tug hailed Republic; before she was hailed from the ship she was ordered to let fall her peak-halyards; ship's helm all the time hard-a-port, and she sagging in; some of men forward

hailed back to wit., and others aft, to notice the Repub ; and we answered we saw her. The master of tug had ordered his engine to back hard before that, and he looked over to see if she obeyed. Had not seen Rep. till her master waved his hat and hailed, but saw before his own men forward took any notice of her; kept about same distance off piers at Pike st.; might have been a little further; jib-boom not rigged.

Wednesday, Feb'y 11th, 1857 (continued).—Napoleon B. Sinclair, (deposition.) mate of ship. See pp. 31, 32, 33.

Thursday, Feb'y 12th.

For Defence.

William G. Hynard, (affirmed). Stevedore. Saw the collision; was at end of pier 27, Dover st., on ship Wm. Rathbone; was on deck; ship heading to eastward, up river; day was pleasant; 2½ knot breeze from W.; tide last of flood, and setting up about ½ a knot inshore; noticed tug and ship first when they were off Catharine market; wit. was then on the dock; tow 200 to 300 y'ds off the docks, heading about W.; notice was given him that lighter and ship were about coming together, and wit. then went on board Wm. Rathbone; on the gangway; then he saw lighter 2 or 3 times her length from ship Wisconsin, which was nearly abreast of his vessel at time, and lighter was rather below Rathbone, angling towards her, 350 y'ds off, and about right opposite Peck Slip ferry; did not see any sweeps in use; she had her mainsail up, and thinks jib also, and was going, he thinks, 2 knots; tug was then backing water, and had sternway on the ship; 200 y'ds from bow of Rathbone, and more from her stern; is speaking of time he went on board R.; supposed she was coming alongside of R.; the tide would have sagged her in to side of R. When he went on board R. he heard a hail from W. to keep off, and it was repeated; then a hail to let go peak halyards (to lighter); it was repeated 3 or four times from W.; distinguished Capt. Ostrom's voice very distinctly; heard no answer; thinks if she had done so lighter would have swung round inside of W.'s bow, or let her peak-halyards, which would have run down almost instantly; does not think her sweeps would have been of any use whilst vessels were so near; but if lighter had put her helm up she would have gone right off round W.; backing of tug would cant bow of W. off towards Brooklyn; if lighter had sweeps out when he first saw her thinks they would have helped her, but she did not need them, and after that she had no time to get them out.

Cross-examined. Sail of lighter was off starboard side when he first saw W.; saw wheels of tug in motion, when he went on the deck of W. could not see the wheels; saw the flour roll out from larboard side of lighter.

Re-direct. Know the tug was backing by broken water coming out from her bows.

Harvey J. Brower (sworn.) Pilot of Wm. H. Webb, tug; has been on Hector as pilot; was master of her at time of this accident; went to foot of Cherry st. for Wisconsin to take her alongside of ship Rathbone; was coming down about 4 knots with W. till he slowed above Catharine market; that was done for purpose of landing, and stopped engine off Catharine ferry, 2 piers above Dover st., to land; first he saw lighter, she was heading up the river; she was a little outside of W.; when about to bows of Rathbone saw lighter sheer inshore, putting her helm a-starboard; W. was then under no headway, and was waiting for tide to sag W. alongside of R., finding lighter was in his way; had no steerage way on W., and was sagging into his place; was hailed (the lighter) to put up her helm and keep off; if she had done so she would have gone off past him on her larboard bow towards Brooklyn; did not see any sweeps out; if there had been they would not have changed her quicker than her helm; backed as far back as could without striking his stern against dock behind him; lighter had flood-tide and wind W.; had good steerage way; there were other vessels around beating with sails; W. was about 300 feet from R. when he began backing; lighter was not dropped at all; if they had been dropped all would have gone clear.

Cross-ex'd. Mr. Herman was master of tug before him; witness continued master one month of 6 months; witness was on W. at time; he went on the W. when pilot rang to slow; that was at Catharine market; W. was to be placed outside of R. at foot of Dover st.; was ordered by agent of clt., (Sturgis.) It was some 10 minutes after slowing before he backed.

Re-direct. Been 14 yrs. master or pilot of tugs.

James W. Haskin (sworn.) Is on tug A. A. Schultz; been 4 months on her; was pilot on Hector at time of collision; started from Cherry st. with W. to land her alongside ship at foot of Dover st.; slowed his engine above Catharine ferry, and stopped it opposite ferry; does not think top of engine would have been seen over ship; saw lighter coming up abreast Fulton st., when backing, and W. had stern way on; witness sung out to lighter to let fall her peak-halyards; had not much, if any, headway on, when he began backing, to the best of his judgment; ship had stern-way on her at time of collision; judged from objects on Brooklyn shore; lighter was just about ahead of tug, (not of ship,) when she sheered in; witness could not see N. Y. side to determine on her position by that shore; no indication till lighter luffed right in, that she was going inside. If peak-halyards had been lowered, there would have been no difficulty at all; she would have gone directly clear of W.

Cross-examined. Was all the time in pilot-house—all the time;

one man in pilot-house till sent down by wit. to do something below; that was about the time he slowed; had a clear look-out forward at wheel. Did not look to see whether tug was in middle of river; cannot state how far from N. Y. side W. was; lighter was in middle of river when she came up. Steered by direction of capt., who was on board the W.; had orders to slow and put helm (so as to bear in towards N. Y.;) had, soon after, order to starboard; about the time lighter came up, did so; that was before he hailed lighter; put helm hard a-starboard and hard a-port; on receiving the orders, had no headway on when starboard helm hard; kept helm starboard till she got stern-way on; then ported it to turn her head off from shore and clear lighter.

Isaac O. Phillips (sworn.) Has been on steamboats last 16 yrs.; was on Wisconsin at time of collision; came with her from Cherry st.; about ½ of ship was ahead of tug on starboard side; went aboard merely to go to Dover st.; then about 10 o'clock, and flood tide was pretty strong; saw and passed a good many sailing vessels; wind W. and light, but vessels were manageable under it; thinks was about to Catharine ferry when capt. of tug ordered tug shut off; the order was obeyed; was standing aside of capt. next order, and a little above Roseveit st. ferry; order was given to stop; these orders were for purpose of getting the ship in her berth; stopping engine would have tendency to sag W. into her berth. The lighter then, in his opinion, was 100 yds. from W., bearing on her port bow; she was out in on his port; thinks lighter was under jib and mainsail, going 2½ to 3 knots by land; thinks she then luffed, bringing her bow across bows of ship; thinks if she had kept her first course she would hit the tug, but had plenty of room to get clear. Judges she was ½ from N. Y. side across river; could easily have kept away and clear of tow with her helm; tug was then backing; capt. ordered backing as soon as he saw lighter; but before witness saw her, noticed particularly that tow had come to a stand-still, and was backing her engine when collision took place.

Cross-examined. Heard hail from W.; Capt. Ostrom's voice and others; orders were given from quarter-deck of ship forward to direct lighter to keep away; considerable noise was made; a dozen hails were made; also as lighter neared ship she was told to slack down her peak; judges the lighter was all of 50 yards off when she was first hailed; heard capt. of tug order pilot to port and starboard his helm, as they came along down all the way from Cherry st.

Re-direct. If peak halyards had been dropped, she would have swung round the head of ship inside of her; she was out at end of bowsprit; the ship could do no more, because she was backed so that her stern nearly touched the docks; sometimes capt. of ship and sometimes capt. of tug, to port and starboard to wheelsman of

ship. The rudder of ship is used to steer; the tow-rudder of tug is always midship, unless in case of emergency to make short turn, when rudder of tug is also used. Orders were given by capt. of tug to his pilot to port his helm when lighter was near him; heard no other order to him at that time in regard to tug.

Re-cross. Supposes tow was 50 y'ds from end of dock when she began backing; thinks she was nearest Rosevelt dock; she was then heading across the river at an angle of 45° when lighter was cut adrift; as came down, was from middle of river to ⅓ across, according as vessels came in their way.

Thomas Beard (sworn.) Rigger on W.; at collision was foreman in discharging her; left Cherry st. about 11 a. m.; was on forecastle going down; a rigger-man at helm; now at sea; first saw lighter about one point on larboard bow of ship, slanting in towards N. Y.; she was under sail; saw no sweeps used; could have seen them plain enough where he stood, for he was looking right down on her; ship about 100 y'ds from Dover st., and a little above where he first saw lighter.

When lighter was hailed ship was just canting off a little, and just keeping under way, when those forward cried out to her to put up her helm; she would have gone outside of ship clear of her, or if she had let down her peak-halyards would have gone clear.

As soon as ship's bowsprit caught the lighter's halyard it canted her over to starboard bow of ship, and two men ran off and caught on ship's anchor.

Cross-examined. Thinks ship might be 60 to 100 y'ds from docks when she got entangled with lighter; kept down the river about ⅓ off, till near Market st., when she ported helm and came in nearer.

Lighter 40 to 50 y'ds, more or less, distance from ship when first hailed to keep away; mate of ship was then forward; lighter had jib and mainsail up at time: recollects mate hailed her.

Henry Brown (sworn.) Engineer on tug; recollect*ions* collision; rec'd signal to slow engine, which did 3 or 4 minutes, then stopped and backed 12 to 15 revolutions.

Capt. Joseph Dowe (sworn.) First mate of Wm. Rathbone; at time of collision at end of Dover st., (pier 27); saw tug and W. coming down close along shore; saw lighter standing in N. Y. shore 2 minutes before collision; then tow about off Rosevelt st., or at ferry; saw vessels come into collision; the tow was not coming ahead any, just holding her own; it was last of flood when lighter caught in with her peak-halyards into ship's jib-boom.

Cross-examined. Did not pay great attention; was just looking on; they were so near together that he thought collision could not be avoided—say 30 or 40 yards apart, when he spoke about flour being thrown overboard; *had* a good deal of hallooing to the lighter; did not distinguish what was said; ship was a little headed

off shore then towards Brooklyn, and about 50 y'ds outside of Rathbone, south, and about abreast of his bow and foremast.

Thursday, Feb'y 19th.

Thomas T. Griffin (sworn.) Saw collision between lighter and ship and tug (about 18 months ago) between piers 20 and 28, East river; witness was on one of those piers; heard a call or hallooing, and he stepped out to end of pier and looked up and saw ship and tug coming down, and a lighter nearly opposite the pier on which he stood, 30 or 40 y'ds from it, heading towards same pier, apparently to come to end of that slip or into adjoining slip, and appeared about stationary; ship and tug were moving down not fast, say 3 or 4 knots, and continued moving until her boom caught in peak of lighter; very little wind at time, thinks not enough to fill sails, and very little tide, as lighter seemed to lie perfectly still, and kept in that state till ship came to her twice the distance she was from the dock, say 70 to 80 y'ds. The bbls. of flour as they came out of lighter tended to float slowly down the river to west—scarcely any movement. End of ship's jib-boom caught in peak of main halyards and pressed her over towards westward gradually, yet as water filled in to the lighter the bbls. all appeared to float out at once.

Cross-examined. Thinks end of that pier on which he stood was clear; there might be a small vessel there; witness was there getting goods from vessel as carman. Does not recollect seeing lighter use oars; her sails were up, but did not appear to help her. Judges the ship and lighter were about equal distance from N. Y. side; don't recollect seeing engine of tug. The collision was nearly opposite to him; ship appeared to be going directly down the river, and about the same speed he noticed when he first looked at her. Thinks lighter had no deck; when rope was cut at halyards lighter partly sunk—not directly down, but hung stem or stern up, and floated.

James Barker (sworn.) Is employed in lighterage; saw the transaction just after ship struck her and lighter was going over; witness was on his own vessel about pier No. 32, and about 300 feet from shore, bound to foot of Dover st. coming down from pier No. 48. Saw lighter below, about at Fulton market; no wind, a light air; tide about slack. The ship and tug passed him just as another tug was taking hold of him, and when he started ship and tug were down to Catharine market, and had got to foot of Dover just as he got in motion; the ship and tug was furthest out in the stream; presumed the lighter was going to the same slip as he was, lying lower side of Dover st., pier No. 28. Did not see them as they hit; saw lighter as she was going over; was pushed over by jib-boom of ship, which struck her just aft the mast.

Cross-examined. Witness saw starboard side of ship; thinks the

vessels were about 300 feet from dock when they came together; witness was about the same distance on the starboard side of ship; there was a bend inwards of river there; ship at time she was in contact with lighter was heading W. N.W.; the river bending in there. The two came together about opposite lower pier of Dover st.; were rather below ship at end of pier, then all drifted down W. together. After that, ship came to where he was.

Charles C. Turner (deposition). See pp. 35, 36, 37.

Testimony closed.

Mr. C. L. Benedict argues the cause for libellants.

Mr. Donohue " " ". " claimants of the steam-tug Hector.

Friday, Feb'y 20th.

Mr. Owen argues the case for clmts. of ship.

Mr. E. C. Benedict argues in reply for the libellants.

Cur adv. vult.

U. S. District Court.

HERMAN BOYER and al.
vs.
THE SHIP WISCONSIN and St. Bt. Hector, &c.

We hereby consent that the deposition of N. B. Sinclair may be taken, at the office of Benedict, Burr & Benedict, No. 74 Wall st., in the city of New York, on the 2d day of February, A. D. 1857, at 3 o'clock p. m., and that said deposition, when sworn to before any notary public, and without being filed, may be read upon the trial of this cause on the part of the libellants, with like effect as if the same were regularly taken before a U. S. commissioner, subject to all legal objections, except as to the mode of taking.

WILLIAMS & BARNARD,
Proc's for Clmt. of Wisc.

MARTIN & SMITHS,
Proc's for Hector.

Dated New York, Jan'y 31, 1857.

Deposition of Napoleon B. Sinclair, taken in pursuance of the annexed consent.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Napoleon B. Sinclair, a witness examined on the part of the libellants, being duly sworn, says: I am a mariner, and expect to leave this city shortly; perhaps within two days. In October, A. D. 1855, I was chief mate of the ship Wisconsin. I was on board the Wisconsin at the time of the collision *at the time of the collision* with the lighter in that month. The ship started from the foot of Grand st. or Water st., in tow of steam-tug Hector. I was on

the forecastle of the ship Wisconsin; I was at work getting lines out and ready to come alongside the dock. There was no wind. At the time of the collision the tide was slack; high water.

What first called my attention was a man on the lighter singing out. I then sung out to a man aft on our quarter-deck. I supposed it was the capt. of the steam-tug. He had charge of the ship at all events; he raised his hand in answer to my hail. I had not seen the lighter before I heard this hail. My hail was the first hail made on board the Wisconsin. At the time of my hail the Wisconsin was going through the water at the rate of from four to five knots. She was then heading about one point inshore from direct down the river; the lighter, when I looked up, was heading in for the slips nearly across us. They were pulling with oars. The lighter was from three to four hundred feet from us at the time I hailed.

Q. Did the ship stop before she struck the lighter?

A. No, sir.

The ship's jib-boom took the lighter's peak halyards, and capsized the lighter. The jib-boom went within three feet of the mast; I can't say exactly how near. I went under the peak-halyards. At that time the ship was going four to five miles an hour. At the time of striking the lighter she might have been going three miles an hour. I heard no one answer my hail from our quarter-deck. I hailed as soon as I saw the lighter.

Q. Who first gave the alarm about the lighter?

A. I did, so far as I know.

Q. If there had been any notice given of the approach of the vessels before yours, would you have heard it?

A. I should. I anticipated a collision when I first looked. The way the ship was going through the water, I didn't see any way to avoid it. The lighter could do nothing, I think, to avoid the collision.

Q. In case the jib-boom had not gone under the halyards, would or would not the ship have struck the lighter?

A. The ship would have struck the lighter?

Q. Could the cross-head of the steam-tug have been seen across the ship by a person some distance the other side?

A. I suppose it could.

Being cross-examined—

I am attached to no vessel. Came from Havre in steamer last in the Jas. Drade. The owners were Gordon, Talbot & Co. I reside 191 Pearl st., Brooklyn. I may go away in one or two days. I am attached to no vessel now. I was on the starboard side of the forecastle when I saw the lighter. Our vessel was then in the river, nearly abreast of Peck slip, a little above it. The lighter was at the time I saw her 300 or 400 further down the

river, a little above the upper pier at Peck slip. I had been attending to getting the lines at that time. I had a boss stevedore on board. He was sent aboard to take charge of the ship. His name was William Ostrom. I had not been looking at the steam-tug particularly before hearing the hail. I had been getting the lines ready from the time we left the dock at Water st. until I heard this hail. We left the head of Water st. about 12 o'c. I can't say that I noticed the time particularly. I was not attending to or preparing to give any orders in regard to landing the ship. We were coming to the upper pier of Peck slip. That was the pier we went into finally. I had noticed our head was changed before I saw the lighter. I had noticed that change about 300 feet above that. The lighter ran nearly ahead when I first saw her. Her bow was just past our stern. When I first saw her she was heading square into the slip. She was using two oars that I saw, one aft and one forward. I could not tell how many men at each oar, but I saw three on the lighter—two men forward and one aft. They were pulling on their oars. Nothing else that I saw was done on board the lighter. They were making one mile an hour or less. They were making headway. They continued pulling on to the lighter until they jumped from her. They jumped on to our anchor. Can't tell where the rest went. She hung a little while by the halyard. They did nothing that I saw on the lighter, *that I saw*, except to row.

Sworn to before me, Feb'y 2d, 1857.

CHA'S L. BENEDICT,
Not. Pub.

Being further cross-examined by Mr. Barnard on behalf of the Wisconsin—

From the time we left Grand st. till the collision I was busy getting the lines cleared up. I did not notice whether we passed any vessels coming down. I don't suppose that any one on the ship saw the lighter before I did, but I don't know that they did not. If they had seen the lighter, I should suppose they would have backed before they did. The capt. of the tug had charge of the ship so far as transporting her in the river. We had enough men on board to move the vessel. A person aft on the ship could not have hailed the lighter without my knowing it. I did not see that the peak of the lighter was lowered before the collision.

Further cross-examined by Mr. Divine for the steam-tug:

The captain of the ship was Henry E. Scott. He was not on board at this time. He never had been on board the ship when I moved the ship. I have often moved the ship without him. At this time I had no charge of the ship whatever.

Re-direct. I considered that the S. B. had charge of the ship.

We were bound to the upper side of pier 26 to discharge what cargo we had in and take in more.

Re-cross by Mr. Divine:

I have had no particular conversation with Mr. Boyer about this collision. I was in the lightering business last winter. I owned a schooner, and worked for a man called Todd. I never worked for Boyer. I should think there were from ten to fifteen persons on the ship at the time; I am not certain. All but the captain of the tug and a Captain Phillips belonged to the ship, so far as I know. One of the stevedore's men was at the wheel of the ship at the time of the collision.

By Mr. Barnard:

These men on the ship were employed by the stevedore.

Re-direct. The most of the men were helping me clear the lines. The ship would have to have stopped a long while before she did to have avoided the collision.

N. B. SINCLAIR.

Sworn to before me, Feb. 3d, 1857.

CHAS. L. BENEDICT,
Not. Pub.

(*Endorsed:*)

13. 38. U. S. District Court. Herman Boyer and al. vs. The Ship Wisconsin and S. B. Hector, &c. Copy deposition of N. B. Sinclair, taken pursuant to the annexed consent.

Benedict, Burr & Benedict, Libts' proctors.

U. S. District Court.

HERMAN BOYER
vs.
THE SHIP WISCONSIN and the Steamboat Hector.

We hereby consent, that the deposition of Capt. Turner may be taken at the office of Benedict, Burr & Benedict, No. 74 Wall st., in the city of New York, on the 5th day of January, A. D. 1857, at 12 o'clock m., and that said deposition when sworn to before any notary public, and without being filed, may be read upon the trial of this cause on the part of the libellants, with like effect as if the same were regularly taken before a U. S. commissioner, subject to all legal objections except as to the mode of taking.

MARTIN & SMITHS,
Proc. for Hector.
WILLIAMS & BARNARD,
Proctors for Libts., Wisconsin.

Dated New York, January 3d, 1857.

U. S. District Court.

HERMAN BOYER
vs.
THE SHIP WISCONSIN and
the S. B. Hector.

SOUTHERN DISTRICT OF NEW YORK, ss.

Charles C. Turner, a witness on behalf of the libellant, examined pursuant to the annexed consent, being duly sworn, says: I am a shipmaster, and have been so about ten years.

I saw the collision between the lighter Republic and the ship Wisconsin: I didn't see them when they struck exactly: I was on the deck of a ship in the slip between Roseveit st. and Dover.

The first that called my attention to the vessel was some one on the lighter hailing the ship: then I took notice of the lighter, and saw that they were pulling with oars, heading in towards the ship: then I saw the ship was coming down with a S. B. on her port side, heading down the stream to the southward and westward: down the stream towards Governor's island: when I looked up I think the ship was three or four times her length from the lighter, as near as I could judge. The ship was then going ahead, and I think the S. B. had stopped paddling: I then went up into the rigging of the ship to see: I went up pretty quick: I don't think I was more than three minutes going up: I took it leisurely and did not hurry myself: went up as I ordinarily do. When I got up about ⅔ the distance from the deck to the top, then I saw the ship's jib-boom was under the peak halyard block and cantel the lighter, so the flood was running out of her. The tide was then ebb: I suppose had been running about ½ of an hour ebb. There was very little wind, so light that I am not positive how it was: I think what was, was down the river: it was very near a calm, not wind enough to fill the sail of anything down the river: I know, for I was on the river just before that. The lighter was going as fast as she could pull with oars towards the dock: her sails were set, and she had two oars pulling. The lighter had no headway up the river at the time she was struck.

Cross-examined by Mr. Williams:

I now command the barque John J. Baimes: Oelricks & Co. own her. I was on the deck of a vessel in the slip between Roseveit and Dover sts., at pier 28, I think: I don't know the name of the ship: the vessel was her whole length in the slip: her stern about even with the end of the dock, and a vessel at end of dock, which was the reason I had to go up the rigging to see over her.

I had but one sight of the vessels before I went up the rigging: I looked at the lighter then some time—some three or four minutes, long enough to see whose boat it was, her position and what they were doing: I knew it was Boyer's boat before I went up.

The jib-boom caught on the block close to the mast—the double block at the mast-head. As soon as I got up I saw one of the men hut got on to the ship's anchor; the port-rail of the Lighter was under water. At the time I saw them caught the sail was set and the gaff was up. The peak was not dropped to my knowledge; it was up at any rate.

All the time I was looking at the lighter before I went up she was pulling with her oars; she was heading a little up the river if anything; oars were out both sides of the lighter, and they were plying both oars. When I got up in the rigging I did not notice the oars, because everything was out of her, the men getting out, the flour going down the river.

When I first saw the lighter I think she was, I suppose, 100 y'ds, as near as I can come at it. I am not sure about distance. Lighter was a little below the slip I was at; she was about square off pier No. 27. I did not know at the time where the ship was bound for; I judged that she wanted to come into pier 27, 28, or about there, because if she wanted to go down further she would have been further off. The ship, at the time I got up into the rigging, was about 75 or 100 y ds from the end of the pier—the same distance the lighter was (p. 28.) I mean. The ship at that time was headed down the river; she might have been canted a little. I can t say that she was. When I first dropped my eye on the lighter after I got up, there were no men in it. All I saw were on the ship s anchor.

There was nothing more to call my attention to this collision than would ordinarily call my attention to such an affair; nothing has occurred since to call my attention to it.

Direct. I am going to sea Wednesday. I suppose I went up 25 or 30 feet from the deck in the main rigging of my ship.

Q. Was there anything in the position of the jib-boom of the ship when caught on the part of the Lighter to show whether the peak-halyards had or had not been let go? (Obj. to.)

A. I don t know whether they had been let go or not. All I know the peak-halyards were over the jib-boom. I have been accustomed to lighters about the harbor.

Q. Is it or not usual for Lighters to move from place to place in the harbor with tide and sweeps and no wind? (Obj. to.)

A. It is usual.

If this lighter had not been struck she would have had no difficulty in reaching the pier. (Obj. to.)

CHAS. C. TURNER.

Sworn to before me this 6th Jan y, 1857.

CHAS. L. BENEDICT,
Not y Public.

(*Endorsed:*)

13. 98. U. S. District Court.

Herman Boyer et al. vs. The Ship Wisconsin and S. B. Hector.

Deposition of Charles C. Turner, taken Jan'y 5, 1857.

Benedict, Burr & Benedict, p'rs for lib'ts.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the seventh day of April, in the year of our Lord 1857.

Present, the Honorable Samuel R. Betts, district judge.

HERMAN BOYER and als.
vs.
THE SHIP WISCONSIN and the Steam-tug Hector, &c. } 13. 98.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants recover in this action against the ship Wisconsin and steam-tug Hector the damages caused by the lighter Republic by the neglect or mismanagement in navigating the ship Wisconsin and st.-tug Hector in the pleadings mentioned.

And it is further ordered, that it be referred to Joseph Bridgham, Esq., one of the commissioners of this court, to ascertain the amount of actual injury to the lighter, and loss of cargo sustained thereby, and report thereon to this court with all convenient speed.

(Signed) SAM. R. BETTS.

(*Endorsed:*)

Vol. 13. No. 98.

United States District Court for the southern district of New York.

Herman Boyer and als. vs. The Ship Wisconsin and Steam-tug Hector.

Benedict, Burr & Benedict, proctors for lib'ts.
Williams & Barnard, " " ship.
Martin & Smiths " " tug.

Interlocutory decree and order of reference filed the seventh day of April, 1857.

District Court of the United States for the southern district of New York.

HERMAN BOYER et als.
vs.
THE SHIP WISCONSIN AND STEAM-TUG HECTOR.

In pursuance of a decretal order made in the above entitled

cause on the seventh day of April, in the year 1857, by which, among other things, it was refered to the undersigned, one of the commissioners of this court, to ascertain the damages caused to the lighter Republic, by the neglect or mismanagement in navigating the ship Wisconsin and steam-tug Hector, in the pleadings in this cause mentioned, and also for the purpose of ascertaining the amount of actual injury to the lighter and loss of cargo sustained thereby, and to report thereon to this court with all convenient speed, I, Charles W. Newton, the commissioner to whom the matter was referred, do report, that I have been attended by the proctors for the several parties, and have taken and examined the testimony offered by said parties, and do find that there is due to the libellant the sum of one thousand nine hundred and sixty-six dollars and seventy-seven cents, ($1,966 77,) at the date of this my report.

Dated July 23, 1857.

All of which is respectfully submitted.

CHAS. W. NEWTON,
U. S. Commissioner.

(*Endorsed:*)

13. 98. U. S. District Court.

Herman Boyer et als. vs. The Ship Wisconsin and St.-tug Hector. Commissioner's report.

Am't found due July 23d, 1857, ($1,966 77.)

Filed Aug't 4, 1857.

At a stated term of the district court of the United States of America for the southern district of New York, on Tuesday the 4th day of August, in the year of our Lord, 1857.

Present, the Honorable Samuel R. Betts, district judge.

HERMAN BOYER and als.
vs.
THE SHIP WISCONSIN and STEAM-TUG HECTOR, their tackle, &c. } 13. 98.

On motion of Mr. Benedict, proctor for the libellants, it is ordered that the report of Charles W. Newton, U. S. commissioner, in the above entitled cause, be in all things confirmed unless exceptions are filed thereto within two days from this date.

(*Endorsed:*)

Vol. 13, No. 98.

United States District Court for the southern district of New York.

Herman Boyer vs. The Ship Wisconsin and S. Bt. Hector, their tackle, &c.

Benedict, Burr & Benedict, proctors for lib'ts.
Order conf. com'r's report nisi.
Filed the fourth day of August, 1857.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Thursday, the 6 day of August, A. D. 1857.

Present, the Honorable Samuel R. Betts, district judge.

HERMAN BOYER et als.
vs.
THE SHIP WISCONSIN AND ST. TUG HECTOR. } 13. 98.

The time to file exceptions to the commissioner's report in this cause having expired, and no exceptions having been filed, on reading and filing the report of Charles W. Newton, United States commissioner, to whom the above matter was referred, by which there is reported due the libellants for damages and injury to the lighter Republic, the sum of one thousand nine hundred and sixty-six $\frac{77}{100}$ dollars ($1,966 77,) on motion of Benedict, Burr & Benedict, proctors for the libellants, it is ordered that the report be in all things confirmed, and that the libellants recover in this action against the ship Wisconsin and st.-tug Hector the amount reported due, together with their costs to be taxed, and that the said ship Wisconsin and the steam-tug Hector, their tackle, &c., be condemned therefor; and on like motion it is further ordered, that out of the proceeds of the stipulations of the claimants of the said ship Wisconsin and st.-tug Hector, when paid into the registry of the court, the clerk of this court pay to the libellants or their proctors the amount reported due, together with their taxed costs, and on like motion of Benedict, Burr & Benedict, proctors for the libellants, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that on the payment into the registry of the court of the amount of the stipulations for costs and value, that the clerk distribute the proceeds in satisfaction of this decree.

BENEDICT, BURR & BENEDICT,
Proctors for Lib'ts.

(*Endorsed:*)

Vol. 13, No. 98.

United States District Court for the southern district of New York.

Herman Boyer and al. vs. The Ship Wisconsin and the St.-tug Hector.

Benedict, Burr & Benedict, proctors for libl'ts.

Williams & Barnard, proctors for claim'ts Wisconsin.
Martin & Smiths, proctors for claim'ts Hector.
Final decree in rem on confirmation of commissioner's report.
Filed and entered the 6th day of August, 1857.

District Court of the United States of America for the southern district of New York.

HERMAN BOYER, ALBERT WOODRUFF, and JEREMIAH R. ROBINSON, agst. RUSSELL SRURGIS, claimant of the steam-tug Hector, impleaded with the ship Wisconsin.

SIR: You will please notice that Russell Sturgis, the claimant of the steam-tug Hector in the above entitled action, appeals to the next term of the circuit court of the second circuit, from the final decree entered in this action. Dated New York, August 15, 1857.

Yours, &c.,
MARTIN & SMITHS,
Proctors for Russell Sturgis,
Claimant of the Steam-tug Hector.

To GEO. F. BETTS, Esq., *Clerk.*

(*Endorsed:*)

13. 98. U. S. District Court, southern district of New York.
Herman Boyer and others agst. Russell Sturgis, claimant of Steam-tug Hector, impleaded, &c.
Notice of appeal.
Martin and Smiths, proctors for claimant, Russell Sturgis.
Filed August 15, 1857.

District of the United States of America for the southern district of New York, in the second circuit.

HERMAN BOYER et als., Libellants and Appellees, vs. THE STEAM-TUG HECTOR, Russel Sturgis, Claimant and Appellant. } Bond for Costs.

Know all men by these presents, that we, Russell Sturgis, of the city of New York, and Latimer Bailey, of the same place, are held and firmly bound unto the above named libellants and appellees in the sum of twenty-two hundred dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 22d day of August, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named appellant has prosecuted an appeal to the circuit court of the United States for the southern district of said New York, in the second circuit, to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

RUSSELL STURGIS, [L. S.]
LATIMER BAILEY. [L. S.]

Sealed and delivered, and taken and acknowledged, this 22d day of August, 1857, before me.

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Russell Sturgis and Latimer Bailey, being duly sworn, depose and say, and each for himself saith, that he resides in the city of New York, and that he is worth the sum of forty-four hundred dollars, over and above all his just debts and liabilities.

RUSSELL STURGIS,
LATIMER BAILEY.

Sworn to this 22d day of August, A. D. 1857, before me.
GEO. W. MORTON, *U. S. Com'r.*

The sufficiency of the sureties to the within bond approved.
N. Y., 24th August, 1857.

SAM. R. BETTS.

(*Endorsed:*)

Vol. 13, page 98, 100.

U. S. Circuit Court.

Herman Boyer et als., liblts. and appellees, vs. The St.-tug Hector, Russell Sturgis, clmt. and appellant.

Bond for costs on appeal.

Martin and Smiths, appellant's proctors.

Filed this 24th day of August, 1857.

Circuit Court of the United States, southern district of New York.

RUSSELL STURGIS, claimant of the Steam-tug Hector, impleaded with the Ship Wisconsin, Appellant,

vs.

HERMAN BOYER, ALBERT WOODRUFF, and JEREMIAH R. ROBINSON, Libellants and Appellees.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit:

The appeal of Russell Sturgis, the above named appellant, respectfully shows: That on or about the 26th day of October, in the year 1855, the above named libellants, Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson, as owners of the lighter Republic, exhibited their libel in the district court of the United States for the southern district of New York against the steam-tug Hector, her tackle, &c., and the ship Wisconsin, her tackle, &c., claiming over $50 as damages, and praying, among other things, for the reasons set forth in said libel, that the said court would pronounce for the damages claimed in the said complaint against the said vessels, their tackle, &c., with interest and costs.

That process issued out of said court, upon which said steam-tug was seized, and that the said appellant thereupon intervened by claim and duly gave stipulation for the purpose of having said steam-tug released and delivered up to him; and that afterwards, to wit, on or about the 10th day of December, in the year 1855, the said appellant filed his answer to said libel, praying, among other things, that the said libel be dismissed with costs in that behalf.

That afterwards, to wit, on or about the 15th day of December, 1855, the said libellants filed their replication to the answer of this appellant, reiterating the allegations and prayers of their said libel, as by reference to said libel, answer, and replication will more fully appear.

That the said cause came on to be heard before the Hon. Samuel R. Betts, judge of the said district court, on or about the 16th, 26th, and 27th days of December, in the year 1856, and was then by the order of said judge adjourned to the 11th day of February, in the year 1857, on which day the trial of said cause proceeded, and was continued on the 12th day of the said month, and finally concluded and summed up by the counsel for the respective parties on the 19th day of February, in the year 1857, which said hearing was had upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and that afterwards, and on or about the seventh day of April, in the year 1857, the said judge made a decree in said cause, whereby it was, among other things, adjudged and decreed that the said libellants recover in this suit against the ship Wisconsin and the steam-tug Hector the damages caused to the lighter Republic by the neglect or mismanagement in navigating the ship Wisconsin and steam-tug Hector; and, also, it was further ordered, that it be referred to a commissioner of the said district court to ascertain the amount of actual injury to the said lighter, and loss of cargo sustained thereby; and under said order it was duly re-

ferred to Charles W. Newton, esq., a commissioner of said court, to ascertain and compute the damages as aforesaid, and report thereon; and the said commissioner, on or about the twenty-third day of July, in the year 1857, reported that there was due to the libellants the sum of nineteen hundred and sixty-six $\frac{77}{100}$ dollars ($1,966 77) at the date of said report, and which said report on or about the fourth day of August, in the year 1857, was duly filed in the office of the clerk of the said court, and that on or about the said fourth day of August, 1857, it was ordered by said court that the said commissioner's report be in all things confirmed, unless exception should be filed thereto within two days from the date thereof; that no exceptions having been filed, afterwards, and on the sixth day of August, 1857, the said commissioner's report was duly confirmed by the said court by the final decree thereof, by which said final decree it was, among other things, adjudged and ordered, that out of the proceeds of the stipulations of the said claimant, together with the proceeds of the stipulations of the claimants of the ship Wisconsin, the said libellants should be paid said amount reported due, with their taxed costs.

And this appellant says that the said decrees are erroneous, inasmuch as said libellants were not entitled to any damages in the premises from the said steam-tug Hector, or from said appellant; and inasmuch as said libellants did not from the said collision suffer damages to the amount named in said final decree.

And said appellant, for these and other reasons, appeals from the whole of said final decree, and from every part thereof which relates to the steam-tug Hector, or the said appellant, to the next circuit court to be held in said district; and on the said appeal he intends to have said cause heard anew in said circuit court on the pleadings and proofs in this district court, and on new and further proofs to be introduced in said circuit court.

And he prays that the records and proceedings in said cause may be returned to said circuit court, and that said decree, so far as it relates to the said steam-tug Hector, or to this appellant, may be reversed with costs, and that the appellees may be condemned to pay to the appellant his costs and charges in the premises, and that such other decree therein may be made as to said circuit shall seem just.

MARTIN & SMITHS,
Proctors for Russell Sturgis, Appellant and Claimant of the Steam-tug Hector.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Christopher Stackpoole, of the city of New York, clerk in the office of Martin & Smiths, appellant's proctors, being sworn, says: That on the 24th day of August, 1857, he served a copy of the foregoing appeal on the appellees' proctors, by delivering to and

leaving the same with a person in charge of said proctors' office, they being at that time absent therefrom.

CHRISTOPHER STACKPOOLE.

Sworn to before me, this 24th day of August, 1857.

[SEAL.] A. C. WILLMARTH,
Notary Public.

(*Endorsed:*)

13. 98, 100. U. S. Circuit Court, S. dist. of New York. Russell Sturgis, cl'mt of steam-tug Hector, impleaded with ship Wisconsin, ag'st Herman Boyer and others. Appeal.
Martin & Smiths, proctors for appellant.
Filed August 24, 1857.

U. S. Dist. Court, S. Dist. of N. Y.—In Admiralty.

HERMAN BOYER, ALBERT WOODRUFF, and Jeremiah R. Robinson,
vs.
BENJAMIN A. MUMFORD and others, claimants of ship Wisconsin, impleaded with the steam-tug Hector.

SIR: You will please take notice that Benjamin A. Mumford and the other claimants of the ship Wisconsin, in the above entitled action, appeal to the next term of the circuit court of the second *court* from the final decree entered in this action.

Dated New York, Aug't 15, 1857.

Y'rs, &c.,
WILLIAMS & BARNARD,
Proctors for Resp'dts, Benjamin A. Mumford and o'rs, Claimants of Ship Wisconsin, 229 *B'dway.*

To GEORGE F. BETTS, Esq., *Clerk.*

(*Endorsed:*)

13. 98. U. S. Dist. Court, S. dist. of N. Y. In Adm'y. Herman Boyer et als. vs. Benjamin A. Mumford and als., &c. Notice of appeal.
Williams & Barnard, proctors for resp'dts, Mumford and al.
To George F. Betts, esq., clerk.
Filed August 17, 1857.

of the United States of America for the southern district of New York, in the second circuit.

HERMAN BOYER et als., Libellants and Appellees,
vs.
THE SHIP WISCONSIN, &c., BENJAMIN A. MUMFORD et als., Claimants and Appellants.
} Bond for Costs.

Know all men by these presents, that we, Benjamin A. Mum-

ford and Silas K. Everett, are held and firmly bound unto the above-named libellants and appellees in the sum of twenty-two hundred dollars, to be paid to the said libellants; for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named appellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

B. A. MUMFORD. [SEAL.]
SILAS K. EVERETT. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 26th day of August, 1857, before me.

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Benjamin A. Mumford and Silas K. Everett, being duly sworn, depose and say, and each for himself saith, that he resides in the city of New York, and that he is worth the sum of forty-four hundred dollars over and above all his just debts and liabilities.

B. A. MUMFORD,
SILAS K. EVERETT.

Sworn to this 26th day of August, A. D. 1857, before me.

GEO. W. MORTON,
U. S. Com'r.

The sufficiency of the sureties to the within bond approved.

(Signed) SAM. R. BETTS.

N. Y., Aug't 26, 1857.

(*Endorsed:*)

Vol. 13, page 98, 100. U. S. Circuit Court. Herman Boyer and al., lib'lts and appellees, vs. The Ship Wisconsin, &c., Benjamin A. Mumford and als., appellants. Bond for costs on appeal. Williams & Barnard, appellants' proctors.

Filed this 26th day of August, 1857.

Circuit Court of the United States, southern district of N. York.

In Admiralty.

BENJAMIN A. MUMFORD et al., claimants of ship Wisconsin, impleaded, &c., resp'ts, Appellants,

vs.

HERMAN BOYER, ALBERT WOODRUFF, and JEREMIAH R. ROBINSON, Libellants.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit:

The appeal of the above named appellants respectfully showeth, that on or about the 26th day of October, in the year 1855, the above named libellants, Herman Boyer, Albert Woodruff and Jeremiah R. Robinson, exhibited their libel in the district court of the United States for the southern district of New York, against the said ship "Wisconsin," impleaded with the steam-tug Hector, claiming the sum of $2,100 and upwards, praying, among other things, for the reasons set forth in said libel, that the said ship Wisconsin, as well as the said steam-tug Hector, her tackle, &c., might be condemned to pay the demand of the said libellants and costs in said libel mentioned.

That, process issued out of said court having been served by the arrest of said ship, these appellants did, on or about the 19th day of November, 1855, file their answer to said libel in the said district court, praying that the said libel be dismissed with their costs in that behalf, as by reference to said libel and the said answer may more fully appear.

That the libellants having filed their replication to the answer of these appellants on the 15th day of December, 1855, the said cause came on to be heard before the honorable Samuel R. Betts, judge of the said district court, on or about the 16th day of December, 1856, upon the depositions and proofs taken in said cause and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon, on or about the 7th day of April, 1857, made a decree thereon, whereby it was, among other things, adjudged and decreed that said libellants recover in this suit against the ship "Wisconsin" and the steam-tug Hector, the damages caused to the lighter Republic by the neglect or mismanagement in navigating said ship and tug, and ordering a reference to a commissioner, who having made his report, the same was confirmed, and the said judge made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellants in said cause recover against the ship "Wisconsin" and steam-tug Hector, her tackle, &c., the sum of $1,966 77, together with costs to be taxed, and that the said ship,

her tackle, &c., be condemned therefor, and that out of the proceeds of the stipulation of the claimants of the said ship "Wisconsin" and the steam-tug "Hector," the said libellants should be paid the amount reported due, with the taxed costs.

And these appellants insist that said decrees are erroneous, inasmuch as said libellants were not entitled to any damages in the premises, and inasmuch as the libellants did not suffer damages to the amount named in said final decree.

And these appellants, for these and other reasons, appeal from the whole of said decree in favor of said Herman Boyer, Albert Woodruff and Jeremiah R. Robinson, to the next circuit court, to be held in the said district; and in the said appeal they intend to introduce additional proofs, and they pray that the records and proceedings may be returned to the said circuit court, and that the said decree and every part thereof may be reversed with costs, or such other decree thereupon made as to the said circuit court shall seem just; and that the said appellees be condemned to pay to these appellants their costs and damages in the premises.

WILLIAMS & BARNARD,
Proctors for Appellants, Mumford et al.
J. J. WILLIAMS, *Advocate.*

(Endorsed:)

13. 98, 100. Circuit Court of the U. S., S. dist. of N. Y. In Admiralty. Benjamin A. Mumford et al., impleaded, &c., resp'ts and app'lts, vs. Herman Boyer et al., libellants, &c. Petition of appeal.

Williams & Barnard, proctors for app'lts, Mumford et al., 229 Broadway.

Filed Aug. 27, 1857.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

HERMAN BOYER and al.
vs.
THE STEAM-TUG HECTOR, &c., &c.

The appeal in this case coming on to be heard—

Mr. Benedict reads from the Apostles evidence on part of libellant.

Mr. Williams reads from the Apostles evidence on part of respondents.

Mr. Williams is heard on part of respondents.
Mr. Nash is heard on part of resp'ts.
Mr. Benedict is heard on part of libellants. Curia advisai vult.

At a special term of the United States circuit court, held at the City Hall, in the city of New York, on the twenty-seventh day of September, 1858.

Present, Judge Nelson.

HERMAN BOYER and al.
vs.
THE SHIP WISCONSIN and STEAM-TUG HECTOR.

The appeal in this cause coming on to be heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation having been had in the premises, it is now ordered, adjudged and decreed, that the decree of the district court be, and the same is hereby, in all things affirmed against the steamboat Hector and the libellants, Herman Boyer, Albert Woodruff and Jeremiah R. Robinson, *recover* of Russel Sturgis, the claimant and stipulator for the steamboat Hector, and William Sturgis, jr., the stipulator for said vessel, in the United States district court, the sum of one thousand nine hundred and sixty-six dollars and seventy-seven cents, the amount of the decree in the district court, together with the costs in said district court to be taxed, with interest thereon from the sixth day of August, 1857, amounting to the sum of twenty-three hundred and fifty-four $\frac{73}{100}$, together with their costs in the circuit court to be taxed, amounting to the sum of ninety-three dollars and ninety-six cents, the whole amounting to the sum of twenty-four hundred and fifty-eight dollars and sixty-nine cents; and it is further ordered that execution issue therefor.

And on like motion, it is further ordered that Russell Sturgis and Lottimer Bailey, the stipulators on the appeal herein, on behalf of the steam-tug Hector, cause the engagement of their bond on appeal to be fulfilled, and that the clerk distribute the proceeds in satisfaction of this decree.

And it is further ordered that the libel is dismissed as against the ship Wisconsin, and that Benjamin A. Mumford, Henry E. Scott, Edward Ellsworth, John Ellsworth and Sylvanus Jenkins, claimants of said ship, recover against Herman Boyer, Albert Woodruff and Jeremiah B. Robinson, the libellants, their costs to be taxed, and that execution issue therefor.

(*Endorsed:*)

U. S. Circuit Court. Herman Boyer and al. vs. The Ship Wisconsin and S. B. Hector. Decree.
Benedict, Burr & Benedict, liblnts' proctors.
Filed Sept. 27, 1858.

Circuit Court of the United States for the southern district of N. Y., in the second circuit.

RUSSELL STURGIS, owner of the steam-tug Hector, impl'd with the ship Wisconsin, Claim't and Appel'nt,
ads.
HERMAN BOYER, ALBERT WOODRUFF, AND Jeremiah B. Robinson, (owners of lighter Republic,) Libl'nts and Respondents.

To the honorable the Supreme Court of the United States:

The appeal of Russell Sturgis, the claimant and appellant in the above entitled action, respectfully showeth: That on the 26 day of October, 1855, the above named Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson filed their libel in the district court of the United States for the southern district of New York against the steam-tug "Hector," her tackle, apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by them to the lighter "Republic," by collision with the steam-tug Hector and the ship Wisconsin in the port of New York; and that afterwards the said steam-tug Hector and ship Wisconsin were arrested on process issued upon said libel, and were afterwards discharged upon said claimants intervening in said action, and filing their separate answers and claims, and entering into stipulations, and afterwards said libellants filed their replications to said answers; and such proceedings were afterwards had in said cause, that on the 7th day of April, 1857, a final decree was made and pronounced therein by the said district court, wherein it was ordered, adjudged, and decreed that the said libellants recover damages caused by the lighter Republic, by the neglect or mismanagement of the claimant of said steam-tug and ship.

And that after such final decree your petitioner duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and then tried anew; and such proceedings were had in the said circuit court, that afterwards, on the 27 day of Sept., 1858, the said circuit court made a final decree in said cause, whereby it was decreed that the said decree of the district court be in all things affirmed against your petitioner, the claimant of said steam-tug, with costs, but afterwards reversed as to the said ship Wisconsin, and that the libellants have execution, and that the stipulators on the part of your petitioner cause their stipulations to be fulfilled; which said decree of said circuit court is, as your petitioner is advised, erroneous, and ought to be reversed.

Wherefore the appellant appeals from the whole of said decree

of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libels, answers, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear said cause anew; and that the said decree of the circuit court, and every part thereof, may be reversed; and that a decree be made that the decree of the said circuit court be reversed in all things; and that the libel herein filed as aforesaid be dismissed, with costs of appeal, or such other decree as to the said Supreme Court shall seem just.

Dated New York, Oct. 11th, 1857.

Yours, &c.,
MARTIN & SMITH,
Proct. for Clm'ts and Appel'ts.

RUSSELL STURGIS.

(*Endorsed:*)

U. S. Circuit Court. Russell Sturgis ads. Herman Boyer & al. Appeals. Martin & Smith, proct. for clm'ts and appel'ts.

Due service of a copy of the within appeal is hereby admitted.
Dated N. Y., Oct., 12th, 1858.

BENEDICT, BURR & BENEDICT,
Pro. for Libel'ts and Resp'ts.

Filed Oct. 12th, 1858.

Circuit Court of the U. S. of America southern district of New York, in the second circuit.

RUSSELL STURGIS, claimant of the steam-tug "Hector," her tackle, &c., impleaded with the ship Wisconsin, her tackle, &c., Appellant,
vs.
HERMAN BOYER, ALBERT WOODRUFF, and Jeremiah R. Robinson, owners of the lighter Republic, Lib'l'nt and Appellees.

Know all men by these presents that we, Russell Sturgis, of the city of New York, and William Sturgis, jr., of the said city, and Robert L. Taylor, of said city, are held and firmly bound unto the above-named Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson, in the sum of five thousand dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the thirteenth day of

October, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas the above named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the Circuit Court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

RUSSELL STURGIS, [L. S.]
WM. STURGIS, JR., [L. S.]
ROB'T L. TAYLOR. [L. S.]

Sealed and delivered, and taken and acknowledged this thirteenth day of October, 1858, before me.

R. E. STILWELL,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

William Sturgis, jun., and Robert L. Taylor being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five thousand dollars, over and above all his just debts and liabilities.

WM. STURGIS, JR.
ROB'T L. TAYLOR.

Sworn to this 13th day of Oct., A. D. 1858, before me.

R. E. STILWELL,
U. S. Commissioner.

I approve the above bond and the sufficiency of the sureties thereto.

SAM'L R. BETTS.

Oct. 13, 1858.

(*Endorsed:*)

U. S. Circuit Court. Russell Sturgis, claimant of the steam-tug Hector, her tackle, &c., impl'd with the ship Wisconsin, appellant, vs. Herman Boyer et al., appellees. Bond on appeal. Martin & Smiths, proctors for claimants and appl'nts. Filed Oct. 13, 1858.

By the Honorable Samuel B. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit court.

To Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson:

Whereas Russell Sturgis, claimant of the steam-tug Hector, her

tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson, against the said steam-tug Hector, her tackle, &c., and has filed the security required by law:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 13th day of October, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-third.

SAM'L R. BETTS.

(Endorsed:)

U. S. Circuit Court south. dist. of N. Y. Russell Sturgis, claim't of the steam-tug Hector, impl'd with the ship Wisconsin, and appellant, vs. Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson, appellees. Citation on appeal.

Martin & Smith, proct. for app'l'ut.

Due service of a copy of the within citation is hereby admitted. Dated N. Y., Oct. 13, 1858.

BENEDICT, BURR & BENEDICT,
Proc. for Lib'l'ut and Appellees.

Filed Oct. 13, 1858.

Circuit Court of the United States for the south. dist. of New York, in the second circuit.

HERMAN BOYER, ALBERT WOODRUFF and Jeremiah R. Robinson, Libel'nts and Appel'nts,
vs.
THE STEAMBOAT HECTOR, her tackle, &c., Russell Sturgis, claimant, and The Ship Wisconsin, her tackle, &c., Benjamin A. Mumford, Henry Escott, Edward Ellsworth, John Ellsworth, Sylvanus F. Jenkins and Oliver R. Mumford, Claimants and Appellees.

To the Honorable the Supreme Court of the United States:

The appeal of Herman Boyer, Albert Woodruff and Jeremiah

R. Robinson, the above named libellants, respectfully showeth, that on the 26th day of October, 1855, the above named libellants filed their libel in the district court of the United States for the southern district of New York against The Steamboat Hector, her tackle, &c., and the Ship Wisconsin, her tackle, &c., in a cause of collision, for the recovery of damages alleged to have been sustained by them to the lighter Republic, by collision with said steamboat Hector and ship Wisconsin; and that afterwards, the said vessels were arrested on process issued upon said libel, and were afterwards discharged upon said claimants intervening in said action and filing their separate answers and claims, and entering into stipulations; and afterwards, the said libellants filed their replication to said answers, and such proceedings were afterwards had that on the 7th day of April, 1857, a final decree was made therein by the district court, wherein it was ordered, adjudged, and decreed that the said libellant recover of the said steamboat Hector and the ship Wisconsin, and the stipulators thereof, the damages sustained by reason of the said collision with said lighter Republic, to wit, the sum of twenty-four hundred and forty-eight $\frac{1}{100}$ dollars; and that after such final decree, the said claimants and appellees duly appealed therefrom to the circuit court of the United States for the southern district of New York, and said cause was removed thereby into the said circuit court and there tried anew, and such proceedings were thereupon had, that afterwards, and on or about the 27th day of Sept., 1858, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be, in all things, affirmed against the said Russell Sturgis, claimant of the said steamboat Hector, with costs, and reversed as to the ship Wisconsin, with costs, against your appellants; which said decree of said circuit court is, as your appellants are advised, erroneous, inasmuch as the libellants were entitled to recover of said steam-tug Hector and said ship Wisconsin their said damages; and the said Benj. A. Mumford, Henry Escott, Edward Ellsworth, John Ellsworth, Sylvanus T. Jenkins and Oliver R. Mumford were not entitled to recover their costs of the appellants, and said decree ought to be modified accordingly.

Wherefore your appellants appeal from the said decree of the said circuit to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libels, answers, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear said cause anew; and that the said decree of the circuit court, so far as it relates to the ship Wisconsin, may be reversed, and that the appellants and libellants recover of the said steamboat Hector and ship Wisconsin the amount of their damages sustained by the collision between the lighter Republic and the said steam-

boat Hector and ship Wisconsin, with costs, or such other decree as to the said Supreme Court shall seem just.

October 13, 1858.

HERMAN BOYER,
ALBERT WOODRUFF,
JEREMIAH P. ROBINSON.

BENEDICT, BURR, & BENEDICT,
Proctors.

E. C. BENEDICT, *Advocate.*

(*Endorsed:*)

U. S. District Court. Herman Boyer and al. vs. The Ship Wisconsin, &c. Appeal. Benedict, Burr, & Benedict, lib'ts' and cl'm'ts' proctors.

Filed Oct. 13, 1858.

U. S. Circuit Court, southern dist. of New York, in the 2d circuit.

RUSSEL STURGIS, claimant of the Steam-tug Hector, impl'd with the ship Wisconsin, App'lnt,
vs.
HERMAN BOYER, ALBERT WOODRUFF and Jeremiah R. Robinson, Appellees.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Manuel A. Kursheedt, being duly sworn, saith that he served on the appellees, Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson, on the 13th day of October, 1858, a copy of the appeal filed in this cause, with the clerk of the circuit court in and for the southern district of New York, on the 12th day of October, 1858, and a copy of the citation filed in this cause, with the said clerk of the circuit court aforesaid, on the 13th day of October, 1858, by delivering a copy of the citation to the appellees, Herman Boyer and Jeremiah R. Robinson, personally, and by leaving a copy of the citation at the place of business of the appellee, Albert Woodruff, he, the said Woodruff, being absent from this State at the time of service, and by leaving said copy appeal for said appellees in the clerk's office of the circuit court aforesaid.

MANUEL A. KURSHEEDT.

Sworn to this 13th day of Oct., 1858, before me.

R. E. STILWELL,
U. S. Com'r.

Circuit Court of the United States for the southern dist. of New York, in the second circuit.

HERMAN BOYER, ALBERT WOODRUFF, and Jeremiah R. Robinson, Lib'lnt and Appellants,

vs.

THE STEAMBOAT HECTOR, RUSSELL STURGIS, claimant, and the ship Wisconsin, Benjamin A. Mumford and others, Claimants and Appellees.

Know all men by these presents, that we, Herman Boyer, of the city of New York, and Jeremiah P. Robinson, of the same city, are held and firmly bound unto the above named Russell Sturgis, Benjamin A. Mumford, Henry Escott, Edward Elsworth, John Elsworth, Sylvanus F. Jenkins, and Oliver R. Mumford, in the sum of five hundred dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 13th day of October, in the year of our Lord one thousand eight hundred and fifty-eight. Whereas the above named appellants have prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the southern district of New York, so far as the same relates to the said ship Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HERMAN BOYER, [L. S.]
JER'H P. ROBINSON. [L. S.]

Sealed and delivered, and taken and acknowledged, this 13th day of Oct., 1858, before me.

CHAS. W. NEWTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
South. Dist. of New York, ss.

Herman Boyer and Jeremiah P. Robinson, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

JER'H P. ROBINSON,
HERMAN BOYER.

Sworn to before me, this 13th day of Oct., 1858.

CHAS. W. NEWTON,
U. S. Com'r.

I approve the above bond and the sufficiency of the sureties thereto. Oct. 13, 1858.

SAM. R. BETTS.

(*Endorsed:*)

U. S. Circuit Court.

Herman Boyer et al., libl'nts and appl'nts, vs. The Steamboat Hector, Russell Sturgis, clm't, and the Ship Wisconsin, Benjamin A. Mumford and others, claimants and appellees.

Bond on appeal.

Benedict, Burr & Benedict, proctors.

E. C. Benedict, advocate.

Filed Oct. 13th, 1858.

By the Honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Benjamin A. Mumford, Henry Escott, Edward Ellsworth, John Elsworth, Sylvanus F. Jenkins, Oliver R. Mumford and Russell Sturgis:

Whereas Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson have lately appealed to the Supreme Court of the United States, from a decree rendered in the circuit court of the United States for the southern district of New York, in the second circuit, on the twenty-seventh day of September, 1858, wherein the said Herman Boyer, Albert Woodruff, and Jeremiah R. Robinson are libellants against the steam-tug Hector, Russell Sturgis, claimant, and the ship Wisconsin, Benjamin A. Mumford, Henry Escott, Edward Elsworth, John Elsworth, Sylvanus F. Jenkins, and Oliver R. Mumford, claimants, and have filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, the 13th day of Oct., in the year one thousand eight hundred and fifty-eight, and in the independence of the United States the eighty-third.

SAM'L R. BETTS.

(*Endorsed:*)

U. S. Circuit Court.

Herman Boyer and al. vs. The Ship Wisconsin and S. B. Hector, &c. Citation.

Benedict, Burr & Benedict, lib'nts' proctors.

We hereby admit due and personally notice and service of the within citation.
Oct. 13th, '58.

J. T. WILLIAMS,
Proct. for Resp'dt.
MARTIN & SMITH,
Att'ys for Sturgis.

Filed Oct. 14, 1858.

Filed 23 Nov., 1858.